

No. 10386

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC POWER & LIGHT COMPANY, and
AMERICAN POWER & LIGHT COMPANY,
Petitioners,

vs.

FEDERAL POWER COMMISSION,
Respondent.

Transcript of the Record

In Three Volumes

VOLUME I

Pages 1 to 272

UPON PETITION FOR REVIEW OF ORDER OF THE
FEDERAL POWER COMMISSION

FILED

JUL 15 1943

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
Federal Power Commission

Commissioners Leland Olds, Chairman, Claude L.
Draper, Basil Manly, John W. Scott and Clyde
L. Seavey.

July 1, 1941

Docket No. IT-5611

In the Matter of

PACIFIC POWER & LIGHT COMPANY

ORDER RESUMING HEARING AND
TO SHOW FURTHER CAUSE

It appearing to the Commission that:

(a) On April 16, 1940, the Commission, having under consideration the failure of Pacific Power & Light Company of Portland, Oregon, to comply with Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees, and with the Commission's order adopted May 11, 1937, ordered the Company to show cause, if any there be, at a public hearing:

(1) Why it had failed to comply with electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and with the order of the Commission adopted May 11, 1937;

(2) Why the petition of the Company dated December 20, 1939, for an extension of time to July 1, 1940, should not be denied; and

(3) Why the Commission should not institute appropriate proceedings against the Company, its officers or directors for failure to comply with the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order dated May 11, 1937;

(b) Pursuant to the order of April 16, 1940, a public hearing was begun on May 20, 1940, before an Examiner of the Commission at Washington, D. C., and the hearing was recessed from day to day until May 24, 1940, upon which day the hearing was adjourned by the Commission's Examiner, subject to further orders of the Commission;

(c) The Company, since the adjournment of the hearing referred to in paragraph (b) hereof, filed, on July 3, 1940, its proposed reclassification and original cost studies required by Electric Plant Instruction 2-D of the Commission's Uniform System of Accounts, and the Commission's order of May 11, 1937;

(d) The Commission's staff and the staff of the Public Utilities Commissioner of Oregon have made a field study of the Company's proposed reclassification and original cost studies and have submitted a joint report to this Commission entitled, "Pacific Power & Light Company, Portland, Oregon, Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937", which

report is to be served herewith upon the Company;

(e) The Company has not fully complied with the requirements of Electric Plant Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order of May 11, 1937;

(f) The Company has not properly determined the amounts includible in Account 100.5, Electric Plant Acquisition Adjustments;

(g) The joint report, described in paragraph (d) above, proposes certain adjustments of the Company's accounts, the disposition of certain amounts classified in Account 107, Electric Plant Adjustments, and recommends that the Company make a proper reclassification of the amount transferred to Account 100.6, Electric Plant in Process of Reclassification; all as more fully set forth in said joint report;

The Commission finds that;

(1) It is advisable, necessary and proper in the public interest to resume and to enlarge the scope of the hearing which pursuant to the Commission's order of April 16, 1940, was begun on May 20, 1940, and was by the Commission's Examiner, adjourned on May 24, 1940, subject to the further orders of the Commission;

Therefore the Commission orders that:

(A) The Secretary serve a copy of the report referred to in paragraph (d) hereof upon

the Company concurrently with the service of this order upon the Company;

(B) The hearing referred to in paragraphs (b) and (1) hereof be resumed on August 25, 1941, at 9:45 a.m., Pacific Standard Time, in Circuit Court Room 704, New Courthouse Building, at Portland, Oregon:

(C) At said hearing Pacific Power & Light Company show further cause, if any there be;

(i) Why it has failed to comply fully with Electric Plant Accounts, Instruction 2-D of the Commission's Uniform System of Accounts and with the order of the Commission adopted May 11, 1937;

(ii) Why the Company should not make the adjusting entries on its books to conform with the recommendations made by the staffs of this Commission and the Public Utilities Commissioner of Oregon in the joint report referred to in paragraph (d) above;

(iii) Why the Company should not submit a plan for the disposition of the amounts which may be properly established in Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at said hearing;

(iv) Why the Company should not submit plans for the disposition of the amount of \$9,-694,593.47, classified in Account 107, Electric Plant Adjustments;

(v) Why the Company should not prepare and submit to the Commission a proper reclassification of the amount of \$492,571.76 trans-

ferred in the joint report, referred to in paragraph (d) hereof, to Account 100.6, Electric Plant in Process of Reclassification;

(vi) Why the Company should not be required to make such other studies as are recommended in the joint report referred to in paragraph (d) hereof, and as fully set forth in the said joint report;

(vii) Why this Commission should not by order determine that disposition be made of the amounts properly established in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments, in accordance with the evidence adduced at said hearing;

(viii) Why the Commission should not institute appropriate proceedings against the Company, its officers, or directors, for failure to comply with the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order dated May 11, 1937;

(D) The Public Utilities Commissioner of the State of Oregon and the Washington Department of Public Service may participate in said hearing, as provided in Part 39, Section 39.4 of this Commission's Rules of Practice and Regulations prescribed pursuant to the provisions of the Federal Power Act.

By the Commission.

LEON M. FUQUAY,
Secretary.

[Title of Commission and Cause.]

PETITION TO INTERVENE

American Power & Light Company (hereinafter sometimes called "American") hereby respectfully represents that:

I. American is a corporation organized under the laws of the State of Maine. It is a public utility holding company, registered, as such, under the Public Utility Holding Company Act of 1935, and owns varying percentages of the outstanding securities of certain electric utility companies and other companies.

II. American owns 1,000,000 shares of the Common Stock of Pacific Power & Light Company, being all of such Common Stock presently outstanding, as well as a 6% promissory note of said Pacific Power & Light Company in the presently outstanding principal amount of \$2,794,500.

III. American is informed and believes (a) that the present fair value of the property of Pacific Power & Light Company fully supports that Company's existing balance sheet and security structure and (b) that said Company's Common Stock was validly issued and for valuable consideration.

IV. American is informed and believes that the Common Stock of Pacific Power & Light Company is now validly outstanding in the hands of American.

V. This proceeding was initiated by an order of the Federal Power Commission dated July 1,

1941, which is rested upon a report of the Commission's staff after examination of the Company's reclassification and original cost studies entitled "Pacific Power & Light Company, Portland, Oregon, Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937", and directs Pacific Power & Light Company to show cause:

"(ii) Why the Company should not make the adjusting entries on its books to conform with the recommendations made by the staffs of this Commission and the public Utilities Commissioner of Oregon in the joint report referred to in paragraph (d) above;

(iii) Why the Company should not submit a plan for the disposition of the amounts which may be properly established in Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at said hearing;

(iv) Why the Company should not submit plans for the disposition of the amount of \$9,694,593.47, classified in Account 107, Electric Plant Adjustments;

(vii) Why this Commission should not by order determine that disposition be made of the amounts properly established in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments, in accordance with the evidence adduced at said hearing."

VI. American is informed and believes that the staff of the Commission will contend at such hearing that the Commission should enter an or-

der requiring the Pacific Power & Light Company to make immediate disposition of amounts aggregating many millions of dollars which the staff of the Commission contends should be established in Accounts 100.5 and 107, by direct charge to surplus or by some plan having a substantially similar effect.

VII. American is informed and believes that any such ordered disposition will substantially impair or even destroy the value of the securities of Pacific Power & Light Company so held by American.

VIII. American is informed and believes that the Commission is without authority under the Federal Power Act or acting in accordance with the Commission's system of accounts (a) to order the reclassification of said amount of \$9,694,593.47 in Account 107 or the disposition thereof, or (b) to order the reclassification of the amounts which the Commission's staff will contend should be established in Account 100.5 or the disposition thereof, and that if the Pacific Power & Light Company is required to make disposition of such amounts it will deprive American and the holders of its securities of property without due process of law and will take the property of American and its security holders for a public use without just compensation, in violation of Article V of the Amendments to the Constitution of the United States.

IX. American represents that a justiciable controversy exists with respect to the above described matters, that it is a proper party in interest to any proceeding in which said matter of disposition may

be in issue and that its participation in this proceeding is proper and in the public interest.

Wherefore, American Respectfully Prays:

(1) That leave be granted to it to intervene in the above entitled proceeding and to become a party thereto for the purpose of asserting and defending the property rights of American and of its security holders in and to the Common Stock of Pacific Power & Light Company; and

(2) That it may be heard in said proceeding and permitted to introduce oral or written testimony with respect to all matters affecting its interests herein and particularly with respect to the matters hereinbefore set forth.

AMERICAN POWER & LIGHT
COMPANY

By H. L. ALLER
President.

REID & PRIEST

Two Rector Street
New York, N. Y.
Attorneys for Petitioner.

(Duly Verified.)

Federal Power Commission docketed Aug. 28, 1941.

Federal Power Commission Aug. 28, 1941 received.

[Title of Commission and Cause.]

Commissioner Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

September 16, 1941.

**ORDER PERMITTING AMERICAN POWER &
LIGHT COMPANY TO INTERVENE**

It appearing to the Commission that:

(a) On August 28, 1941, American Power & Light Company filed a petition to intervene herein:

(b) American Power & Light Company is a registered holding company and owns all the presently outstanding Common Stock of Pacific Power & Light Company, as well as a 6% promissory note of said Pacific Power & Light Company in the presently outstanding principal amount of \$2,-794,500;

(c) The participation of American Power & Light Company in the above entitled proceedings may be in the public interest;

The Commission orders that:

American Power & Light Company be and it is hereby permitted to become an intervener and party to these proceedings, subject to the rules and regulations of the Commission; provided, however, that the admission of American Power & Light Company as an intervener and party to the proceedings herein shall not be construed as acknowledgment by the Commission that the character of evidence described in the petition to intervene is considered relevant and material to the issue at hear-

ing, nor as recognition by the Commission that such party might be aggrieved by any order of the Commission issued in these proceedings.

By the Commission.

LEON M. FUQUAY,
Secretary.

[Title of Commission and Cause.]

PETITION TO INTERVENE

Now comes your petitioner, Public Utilities Commissioner of Oregon, hereinafter called the "Intervener", and respectfully represents that it has an interest in the subject matter in the above-entitled proceedings relating to Pacific Light & Power Company, hereinafter called "Company", and desires to intervene and become a party to said proceeding, as provided by Section 1.31, Rules of Practice and Regulations, Federal Power Commission, and says:

1. That intervener is a state commission of the State of Oregon, as provided by the laws of said State of Oregon; that the above-mentioned Pacific Light & Power Company is a public utility company operating in the said State of Oregon and subject to the jurisdiction and regulation of this Intervener, as provided by the laws of the said State of Oregon;

2. That said company mailed to this Intervener on the 2d day of July, 1940, its report entitled "Reclassification of Plant Accounts as of January 1,

1937'' made pursuant to the Uniform System of Accounts and Order No. 5962 adopted by this Intervener;

3. That thereafter a joint report was made on the 21st day of June, 1941, by the Federal Power Commission and this Intervener entitled "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937";

4. That the position and interest of this Intervener is the same as that of the Federal Power Commission specified in the Order to show cause, dated July 1, 1941, in the above-entitled matter and Docket No. IT-5611;

Therefore this Intervener prays: That the Pacific Light & Power Company show cause why the Federal Power Commission should not order the adjustment of the said company's accounts to conform with the aforementioned joint "Report on the Reclassification and Original Cost Studies of Electric Plant as at January 1, 1937", made on the 21st day of June, 1941, and that the Public Utilities Commissioner of Oregon be made a party by intervention in this proceeding.

ALVIN A. KURTZ

General Counsel for Petitioner

460 N. Commercial St.
Salem, Oregon

(Duly Verified)

Federal Power Commission, Jul. 21, 1941, received.

[Title of Commission and Cause.]

PETITION FOR INTERVENTION

Comes now the Department of Public Service of Washington, and petitions the Federal Power Commission for permission to intervene in the above entitled proceedings, as provided by Section 1.31, Part 1, of the Rules of Practice and Regulation, for the following reasons:

That Petitioner is the regulatory agency of the State of Washington, as provided by the laws of the said State of Washington.

That the Pacific Power & Light Company is a public service company, operating in the State of Washington, within the meaning of the public service laws of this State and is subject to the regulations of this Petitioner, as provided by the laws of the said State of Washington.

That the said Petitioner is affected by and has an interest in the above entitled proceedings relating to the Pacific Power & Light Company.

Wherefore said Department of Public Service of Washington, Petitioner, prays

Leave to intervene and participate in all proceedings herein and that it receive notice of all such future proceedings.

(Signed) SMITH TROY

Attorney General

(Signed) HARRY A. BOWEN

Special Assistant Attorney
General

Attorneys for Department of
Public Service of Washing-
ton

(Duly Verified)

(Affidavit of Service by Mail Sept. 19, 1941.)

Federal Power Commission, Sep. 23, 1941, received.

[Title of Commission and Cause.]

Commissioners Leland Olds, Chairman, Basil Manly and John W. Scott. Claude L. Draper and Claude L. Seavey not participating.

August 9, 1941.

ORDER PERMITTING PUBLIC UTILITIES
COMMISSIONER OF OREGON TO IN-
TERVENE

It appearing to the Commission that:

(a) On July 21, 1941, the Public Utilities Commissioner of Oregon filed a petition for permission to intervene in and become a party to the above-entitled proceeding:

(b) The participation of the Public Utilities

Commissioner of Oregon in this proceeding may be in the public interest;

The Commission orders that:

The Public Utilities Commissioner of Oregon be and is hereby permitted to become an intervener and party to the above-entitled proceeding subject to the rules and regulations of this Commission.

By the Commission.

J. H. GUTRIDE,
Acting Secretary

[Title of Commission and Cause.]

Commissioners Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

September 26, 1941

ORDER PERMITTING DEPARTMENT OF
PUBLIC SERVICE OF WASHINGTON TO
INTERVENE

It appearing to the Commission that:

(a) On September 23, 1941, the Department of Public Service of Washington filed a petition for permission to intervene in and become a party to the above-entitled proceeding:

(b) The participation of the Department of Public Service of Washington in this proceeding may be in the public interest;

The Commission orders that:

The Department of Public Service of Washing-

ton be and is hereby permitted to become an intervenor and party to the above-entitled proceeding, subject to the rules and regulations of this Commission.

By the Commission.

LEON M. FUQUAY

Secretary

MOTION TO DISMISS

Pacific Power & Light Company, hereinafter referred to as "the Company", hereby moves to dismiss this proceeding instituted by the order of the Federal Power Commission dated April 16, 1940, as extended by further order, entitled "Order Resuming Hearing and to Show Further Cause", dated July 1, 1941. For convenience the Federal Power Commission is sometimes hereinafter referred to as the "Commission"; said order of July 1, 1941, is referred to as "the order"; and the Federal Power Act is referred to as the "Act". This motion to dismiss is based upon the following grounds:

First: The Company was organized under and in accordance with the laws of the State of Maine on June 16, 1910. It is now, and since the date of its organization has been, engaged primarily in the business of constructing, maintaining, and operating facilities for the generation, transmission, and

distribution of electric energy in the States of Oregon and Washington.

Its system includes facilities in the states of Oregon and Washington used for the generation of electric energy, certain interstate transmission lines, certain facilities used only for the transmission of electric energy in intrastate commerce, and extensive facilities used exclusively in local distribution. Such intrastate facilities comprise the major part of the Company's property. Its activities and operations are now, and were since prior to enactment of the Federal Power Act, subject to comprehensive state regulation by the states of Oregon and Washington with respect to its basic corporate books of account, rates, adequacy of service, issuance of securities, accounting, and other aspects of its business which concern the general public interest. Its business is essentially local in character. Its revenues are derived under rates fixed by state regulatory authorities in accordance with the laws of their respective jurisdictions, which recognize the utility's right to a fair return upon the fair value of its property devoted to public use. The Company is also subject to the general laws of the State of Maine, relating to the conduct of its corporate affairs, the status of its capital stock, and the rights and obligations of its stockholders.

The Commission, both by its said orders of April 16, 1940, and July 1, 1941, and by its so-called Uniform System of Accounts prescribed for Public Utilities and Licensees, effective January 1, 1937, and its order of May 11, 1937, pertaining to said

System of Accounts, attempts to assume comprehensive accounting jurisdiction, not only over the project property of licensees and over the facilities subject to the jurisdiction of this Commission which are owned and operated by public utilities, but also over properties and operations of public utilities which are, by express provision of the Federal Power Act, excepted and removed from the jurisdiction of the Commission. Such attempt of the Commission to extend its regulatory jurisdiction to matters subject to regulation by the states violates the Federal Power Act. The Commission has no accounting jurisdiction over the Company's general corporate and other fundamental accounts and records, such matters being subject to state regulation.

Second: The Commission's Uniform System of Accounts violates both the letter and spirit of the Act and exceeds the lawful authority of the Commission under the Act and under the Constitution of the United States in that:

(a) thereby the Commission attempts to assume accounting jurisdiction over properties and operations not subject to the jurisdiction of the Commission, as more fully set forth in paragraph First hereof;

(b) the Commission is not authorized by law to require the general corporate or other fundamental accounts and records of the Company to be kept on the basis of original cost, as the term is defined and interpreted by the Commission, or to employ such basis as the measure of amounts to be entered or retained in the accounts of the Company, or to

determine the value of property of the Company for purposes of controlling such accounts;

(c) the Uniform System of Accounts, as interpreted by the Commission and its staff, and the requirements of its said various orders with respect to reclassification and disposition, are unreasonable and unlawful, in that they freeze and make definite certain past accounting acts and practices where by so doing the interests or claims of the utility may be prejudiced, while overriding such acts and practices where by so doing such interests or claims of the utility may also be prejudiced; and in that said System and said requirements are based on an arbitrary and retrospective application of the System of Accounts to transactions and accounting practices which took place or were made prior to the enactment of the Act or to the adoption of the System of Accounts, to the unlawful prejudice and deprivation of property rights vested prior to enactment of the Act.

(d) the System of Accounts as interpreted by the Commission arbitrarily excludes from electric plant account elements of actual original cost which were not previously recorded therein by the Company, while corresponding elements so recorded by other similar utilities are permitted to remain therein; and, by such discrimination, said System makes impossible the application of uniform standards of accounting among the various utilities which the Commission is attempting to subject to the requirements of said System.

(e) the Commission, in and by this proceeding,

attempts to exercise judicial powers and to adjudicate matters which are determinable and subject to adjudication only in a direct proceeding in a court of competent jurisdiction.

Third: The Commission's said order of July 1, 1941, which here serves only the purpose of a notice of hearing, and which directs the Company, among other things, to appear and show cause *by* it failed to comply with Electric Plant Accounts, Instruction 2-D, and said order of May 11, 1937, and why it should not be required to adjust its books of account to conform with the Joint Report of the staffs of the Commission and the Public Utilities Commissioner of Oregon, which Joint Report has not been adopted by the Commission as a finding, is indefinite and uncertain, and said order fails to apprise the Company with reasonable definiteness of the issues of said hearing or the claims or proposals to which the Company is called upon to respond at such hearing, so as to enable it adequately to prepare for such hearing; nor has the Company been apprised with reasonable definiteness or certainty as to the issues which may be presented as to the disposition of amounts ultimately to be established in Accounts 100.5 or 107 "in accordance with the evidence adduced at said hearing". inasmuch as the amounts which properly may be so established have not been determined by the Commission, and since it is impossible to anticipate what evidence may be adduced in respect thereof at said hearing.

Fourth: The Commission is without jurisdiction in this proceeding to order the Company to write

off or otherwise dispose of any amount now recorded in its fundamental books of account, and particularly any amount the writing off of which would impair the security structure of the Company, for the following reasons, among others:

(a) No jurisdiction has been conferred upon the Commission under the Act to require the writing off of property values from the accounts of the Company;

(b) The Company maintains, as set forth in its Statement A on file with the Commission herein, and for aught that appears in the record in this accounting proceeding, it must be assumed for the purposes of this motion, and until the question has been properly determined in an appropriate proceeding, that the fair present value of the property in the Company's electric plant account, as determinable under the laws of the states of Oregon and Washington, and under the laws of the United States, is not less than the amount entered on the books of the Company as the cost of such electric plant, and that such value fully supports the Company's security structure;

(c) Any such disposition would, therefore, unlawfully prejudice the Company and its security holders by its failure to recognize the fair value of such property as determined and protected under the decisions of the Supreme Court of the United States and of the courts of the states of Oregon and Washington;

(d) The Commission is without jurisdiction in any event to order any such disposition prior to a final determination of the amounts properly to be

classified in the books of the Company as the cost of its electric plant and other assets; and the issuance of an order of disposition, as a result of this hearing, would deprive the Company of fair notice and hearing, and of due process of law.

Fifth: The Commission is without jurisdiction to proceed further under said orders, and the proceedings thereunder should be dismissed, because the regulation of intrastate business and operations sought to be enforced under and by virtue of said System of Accounts is not within any power vested in Congress by the Constitution of the United States, but is an invasion of the powers reserved to the states and to the people within the meaning of Article X of the Amendments to said Constitution; because such regulation would deprive the Company of property and property rights without due process of law, and would take such property and property rights for public use without just compensation, in violation of Article V of the Amendments to said Constitution; because the indefiniteness and uncertainty of the notice of hearing herein violate the due process clause of Article V of the Amendments to said Constitution; and because the Commission is undertaking to exercise judicial powers vested only in the Courts in violation of Article III of said Constitution.

In submitting this motion, the Respondent Expressly reserves and refuses to waive any constitutional or legal rights, and expressly reserves the right to contest the validity and the constitutionality of any provision of the Federal Power Act as applied to it, and of any rule, regulation of order

now or hereafter made by the Commission with respect to the Company's Electric Plant Account in purported reliance upon said Act.

Portland, Oregon, September 27, 1941.

Respectfully submitted,

LAING GRAY & SMITH

By JOHN A. LAING

Public Service Building

Portland, Oregon

Attorneys for Pacific Power
& Light Company

Federal Power Commission, Sept. 29, 1941, received.

[Title of Commission and Cause.]

ANSWER

Pacific Power & Light Company, hereinafter referred to as "the Company", without waiver of and expressly subject to the objections and grounds recited in its Motion to Dismiss this proceeding, dated September 27, 1941, and expressly reserving all of its legal rights in respect of such objections and such grounds for dismissal of this proceeding, hereby makes and files its Answer to the order of the Federal Power Commission dated April 16, 1940, as extended by further order of the Commission herein, entitled "Order Resuming Hearing and to Show Further Cause", dated July 1, 1941. For convenience, the Federal Power Commission is referred to herein as "the Commission"; and the Federal Power Act is referred to as "the Act".

As and for its Answer to said orders, the Company alleges and shows as follows:

I.

Order of April 16, 1940

The matters in respect to which the Company was required by said order of April 16, 1940, "to show cause", were the following:

"(1) Why it has failed to comply with Electric Plant Accounts Instruction 2D of the Commission's Uniform System of Accounts and with the order of the Commission adopted May 11, 1937;

(2) Why the petition of the Company dated December 20, 1939, for an extension of time to July 1, 1940, should not be denied; and

(3) Why the Commission should not institute appropriate proceedings against the Company, its officers or directors for failure to comply with the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order dated May 11, 1937;"

and as to said matters and each of them, the Company has heretofore made full and complete answer as of May 23, 1940, by its written and verified answer thereto filed herein on May 18, 1940, and by the testimony of Will T. Neill, vice president of the Company, presented at the hearing held on said show cause order at Washington, D. C., on May 23, 1940; and the answer and showing so made are hereby adopted and confirmed, and are hereby as-

serted to be a full and complete answer to said order of April 16, 1940, as of said date of the hearing held thereon.

II.

Order of July 1, 1941

The matters in respect of which the Company was required by said order of July 1, 1941, "to show cause" are set forth as subparagraphs (i) to (viii) inclusive of paragraph (C) of said order, as follows:

"(i) Why it has failed to comply fully with Electric Plant Accounts, Instruction 2-D of the Commission's Uniform System of Accounts and with the order of the Commission adopted May 11, 1937;

(ii) Why the Company should not make the adjusting entries on its books to conform with the recommendations made by the staffs of this Commission and the Public Utilities Commissioner of Oregon in the joint report referred to in paragraph (d) above.

(iii) Why the Company should not submit a plan for the disposition of the amounts which may be properly established in Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at said hearing;

(iv) Why the Company should not submit plans for the disposition of the amount of \$9,694,593.47, classified in Account 107, Electric Plant Adjustments;

(v) Why the Company should not prepare and submit to the Commission a proper reclassification

of the amount of \$492,571.76 transferred in the joint report, referred to in paragraph (d) hereof, to Account 100.6, Electric Plant in Process of Reclassification;

(vi) Why the Company should not be required to make such other studies as are recommended in the joint report referred to in paragraph (d) hereof, and as fully set forth in the said joint report;

(vii) Why this Commission should not by order determine that disposition be made of the amounts properly established in Account 100.5 Electric Plant Acquisition Adjustments and Account 107, Electric Plant Adjustments, in accordance with the evidence adduced at said hearing;

(viii) Why the Commission should not institute appropriate proceedings against the Company, its officers, or directors; for failure to comply with the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order dated May 11, 1937;''

III.

Order of July 1, 1941—Subparagraph (i)

With respect to the matters set forth in said subparagraph (i) as of the date of the hearing held herein on May 23, 1940,

(a) The Company hereby refers to, and by such reference incorporates herein, the Company's said answer of May 18, 1940, and the testimony of Will T. Neill, vice president of the Company, presented at said hearing of May 23, 1940.

(b) With respect to the status of such matters as of September 29, 1941, the date of this Answer, the

Company airmailed on July 1, 1940, and filed with the Commission on July 3, 1940, a volume consisting of 152 printed pages with a cover page entitled in part: "Pacific Power & Light Company—Reclassification of Electric Plant—Statements A to I inclusive"; and since said date the Company has completed, and on September 27, 1941, the Company transmitted by airmail to the Commission at Washington, D. C., and on September 26, 1941, delivered to the representatives of the Commission's staff at Portland, Oregon, original and several copies of a volume compiling the results of further studies, analyses, and revisions made by the Company since July 3, 1940, pertaining to the matters covered by the original Statements B, E, F, G, H, and I filed with the Commission on that date, said compilation consisting of Revised Statements B, E, F, G, H, and I, respectively, with an Introductory and Explanatory Statement in the form of a letter to the Commission dated September 26, 1941, attached to said Revised Statements, all verified by oath of said Will T. Neill under date of September 26, 1941.

(c) The preparation and filing of said original Statements filed July 3, 1940, and of said Revised Statements and Introductory and Explanatory Statements so airmailed to the Commission on September 27, 1941, and delivered to the Commission's staff on September 26, 1941, constitute full compliance by the Company with the provisions of the aforementioned Instruction 2-D, and of said order of the Commission adopted May 11, 1937.

IV.

Order of July 1, 1941—Subparagraph (ii)

With respect to the matters set forth in said subparagraph (ii),

(a) The Company refers to, and by such reference incorporates herein, the statements and data contained in the aforementioned Introductory and Explanatory Statement dated September 26, 1941, and the accompanying revised Statements B, E, F, G, H, and I.

(b) The Company's treatment of the adjustments proposed in said Joint Report is summarized and explained on pages 5 to 15, inclusive, of said Introductory and Explanatory Statement of September 26, 1941; and, as stated on page 12 of said Introductory and Explanatory Statement—

“It will be noted * * * by comparing the Company's treatment of the examiners' proposed adjustments with the recommendations pertaining thereto contained in the Joint Report, that the Company and the staffs are in accord as to the “Original Cost” (as defined by the Commission to exclude any restatement of unrecorded costs) of the various items of property to be recorded in Account 100.1, Electric Plant in Service, and Account 100.2, Electric Plant Leased to Others; and that such differences as now exist between the Company's Revised Statements and the recommendations of the Joint Report relate exclusively to the particular Adjustment and other Accounts in which it is believed the differences between cost

to utility and such original cost should be recorded.”

(c) The Company believes and asserts that the cost to it of its electric plant, as determined in accordance with the laws of the States of Oregon and Washington, is not less than the amount that will be recorded in the accounts of the Company therefor in accordance with its said Revised Statements B, E, F, G, H, and I; and that, in the preparation of the original Statements and of said Revised Statements filed pursuant to the Commission's order of May 11, 1937, it has properly made such examinations, determinations and reclassifications as are reasonably required to determine the costs of original construction and the costs to the Company of its electric plant in accordance with the laws to which the Company has been subject in the recordation of such costs in its accounts; and that the adjustments recommended in the Joint Report, to the extent that they differ from the treatment proposed to be accorded thereto in the Company's said Introductory and Explanatory Statement and said Revised Statements, are improper and based upon erroneous premises, assumptions, and/or conclusions, and are not such as the Company may lawfully be required to enter upon its books of account.

V.

Order of July 1, 1941—Subparagraphs (iii)
and (iv)

With respect to the matters set forth in said subparagraphs (iii) and (iv),

(a) The Company, in and by its said Revised Statement H, has submitted its plans and proposals for the disposition of the amount established by it in Account 100.5, Electric Plant Acquisition Adjustments, in and by its said Revised Statements, namely, the sum of \$7,019,528.20, subject to the explanations, objections, and protest, and to the reservation of rights, set forth in the Foreword to said Statement H.

(b) The Company, in and by its said Revised Statement H, has submitted its plans and proposals for the disposition of the amount established by it in Account 140, Unamortized Discount and Expense, in its said Revised Statements, namely, the amount of \$2,024,993.99.

(c) The Company, in and by its said Revised Statement H, has submitted its plans and proposals for the disposition of the amount established by it in Account 107, Electric Plant Adjustments, in its said Revised Statements, namely, the amount of \$42,554.68.

(d) The sum of the amounts referred to in (a), (b), and (c) above represents \$9,087,076.87 of the total of \$9,694,593.47 referred to in said subparagraph (iv), and constitutes the entire amount thereof proposed by the Company to be disposed of. As stated at page 4 of the Foreword to said Revised Statement H,

“there is no ‘amount of \$9,694,593.47, classified in Account 107, Electric Plant Adjustments’, such amount representing merely a combination of certain figures referred to in the Joint Report of the

examiners (Joint Report, page 31), the proposed reclassification of which has not been accepted, except in part, by the Company, and none of which has yet been passed upon by the Commission.”

The Company, therefore, for the reasons more fully stated in said Foreword to said Revised Statement H, has no plan and cannot reasonably be required to submit a plan, for the disposition of any part of such \$9,694,593.47 not classified by it in said Revised Statements in said Account 107, Electric Plant Adjustments.

VI.

Order of July 1, 1941—Subparagraph (v)

With respect to the matters set forth in said subparagraph (v), the items making up this total have been discussed, and an appropriate reclassification has been presented, under Items 10, 11, 12, and 16, on pages 7 and 8 of the aforementioned Introductory and Explanatory Statement.

VII.

Order of July 1, 1941—Subparagraph (vi)

With respect to the matters set forth in said subparagraph (vi), namely, the making of “such other studies as are recommended in the Joint Report”, the Company has made and submitted the results of such further studies suggested by said Joint Report, and all of such further studies, except that it has not yet completed the suggested “studies with respect to the determination and

reclassification of cost of land and land rights'' as to which the Joint Report states in part

“Although adjustment has been made in this report to reflect overall costs of electric plant land owned in fee, no attempt has been made to assemble costs by parcels. * * * It is recommended that the company immediately institute such studies as will permit conformance to Instruction 9-E.”

The Company has been and is now engaged in these particular studies, which involve painstaking research and investigations going back over a period of many years among deed records and other possible sources of information relating to all of the lands and land rights now owned by the Company as the result of innumerable transactions of predecessor companies. The Company is carrying on this work diligently and in good faith, but to complete the work will require many months of further study and investigation of such records, the ultimate results of which will have no material bearing upon the reclassification.

VIII.

Order of July 1, 1941—Subparagraph (vii)

With respect to the matters set forth in said subparagraph (vii),

(a) The requirements of said subparagraph (vii) are so palpably indefinite and uncertain, as set forth in paragraph Third of the Company's Motion to Dismiss herein, as to preclude the Company's showing cause with respect to the disposition of any amounts, other than as hereinabove

set forth, that may be determined by the Commission to be properly established in either Account 100.5, Electric Plant Acquisition Adjustments, or in Account 107, Electric Plant Adjustments. It is impossible for the Company to anticipate, other than as hereinabove set forth, what amounts may ultimately be established in said Accounts 100.5 and 107 "in accordance with the evidence adduced at said hearing", as such amounts have not yet been determined by the Commission, and the Company cannot anticipate what evidence may be introduced in respect thereof at the hearing, or what proposals the Company may be called upon to respond to as the result of any action taken by the Commission following such hearing. Consequently, any order entered herein following such hearing, which requires disposition of any such amounts, other than as hereinabove set forth, would be null and void as denying the Company fair notice and hearing and would deprive it of its property and property rights, without due process of law, in violation of Article V of the Amendments to the Constitution of the United States.

(b) The Commission has no jurisdiction in any event to order the Company to write off or otherwise dispose of any amount now recorded in its fundamental books of account, and particularly any amounts the writing off of which would impair the security structure of the Company, or which represent property values, for the following reasons, among others:

(1) No jurisdiction has been conferred on the Commission under the Act to require the writing off of property values from the accounts of the Company.

(2) The present fair value of the property in the Company's electric plant account, as determinable under the laws of the states of Oregon and Washington, and under the laws of the United States, is not less than the amount entered on the books of the Company as the cost of such electric plant, and such value fully supports the Company's security structure.

(3) Any such order of disposition would unlawfully prejudice the Company and its security holders by its failure to recognize the fair value of the Company's property as determined and protected under the decisions of the Supreme Court of the United States and of the courts of the states of Oregon and Washington.

IX.

Order of July 1, 1941—Subparagraph (viii)

With respect to the matters referred to in said subparagraph (viii), the matters and things hereinabove set forth or referred to in this Answer establish and show that the Company has complied fully and in good faith, and to the best of its ability, with the provisions of Electric Plant Accounts Instruction 2-D of the Uniform System of Accounts, and of the Commission's order dated May 11, 1937, and constitute a full and complete showing that no reasonable or lawful basis exists

for instituting proceedings against the Company, its officers, or directors, for alleged failure to comply with such provisions.

Wherefore the Company, having fully answered said orders of the Commission of April 16, 1940, and July 1, 1941, respectively, prays that the Commission enter an order dismissing this proceeding, or failing the entry of such order, that the Commission take no further or other action herein except to make and enter an order approving the Company's proposed reclassification of its electric plant accounts in form and substance as proposed and set forth in the Company's Revised Statements B, E, F, G, H, and I referred to above.

PACIFIC POWER & LIGHT
COMPANY

By WILL T. NEILL

Vice President

LAING GRAY & SMITH

By JOHN A. LAING

Attorneys for Pacific Power
& Light Company

(Duly Verified.)

[Title of Commission and Cause.]

OPINION No. 84

APPEARANCES

For Pacific Power & Light Company:

Laing, Gray & Smith by

John A. Laing, Esquire

Francis F. Hill, Esquire

For American Power & Light Company:

Reid & Priest by

N. H. Powell, Esquire

White & Case by

Adrian Foley, Esquire

Richard H. Appert, Esquire

For the Commission:

George Slaff, Esquire

Reuben Goldberg, Esquire

For the Public Utilities Commissioner of Oregon:

Alvin A. Kurtz, Esquire

For the Washington Department of Public Service:

Harry C. Bowen, Esquire

T. A. Martin, Esquire

A. J. Greer, Esquire

OPINION

By the Commission:

This proceeding arises under the Federal Power Act and relates to the Uniform System of Accounts prescribed by the Federal Power Commission for public utilities and licensees and to the accounting

entries which Pacific Power & Light Company (hereinafter sometimes referred to as "Respondent" or "Pacific") is to make pursuant to this System of Accounts.

HISTORY OF THE PROCEEDINGS

On April 16, 1940, we adopted an order requiring Pacific to show cause why appropriate proceedings should not be instituted for failure to comply with Electric Plant Accounts Instruction 2-D¹ of our Uniform System of Accounts and our order of May 11, 1937, in respect thereto. Hearing was held in May 1940 and, after testimony, adjourned by the presiding Trial Examiner, subject to the further order of the Commission.

On July 3, 1940, Pacific submitted its reclassification and original cost studies required by the foregoing Electric Plant Accounts Instruction. A field examination of the studies was made jointly

(1) Electric Plant Accounts Instruction 2-D of the Uniform System of Accounts provides, p. 38:

"D. Not later than 2 years after the effective date of this system of accounts, each utility shall have completed the studies necessary for classifying its electric plant as of the effective date of this system of accounts in accordance with the accounts prescribed herein and it shall submit to the Commission the entries it proposes to make to carry out the provisions of this instruction. It shall submit also a comparative balance sheet showing the accounts and amounts appearing in its books as of the effective date of this system of accounts and the accounts and respective amounts as of the same date after the proposed entries shall have been made."

by the staffs of this Commission and the Public Utilities Commissioner of Oregon, who prepared a joint report entitled, "Pacific Power & Light Company, Portland, Oregon, Report on the Re-classification and Original Cost Studies of Electric Plant as of January 1, 1937."

On July 1, 1941, we adopted an order transmitting the joint report to respondent and requiring it, among other things, to show cause why it should not make the accounting adjustments proposed in the report and submit appropriate plans for the disposition of amounts established in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments. Hearings were held in Portland, Oregon, from September 29, 1941, to October 8, 1941.

Permission to intervene in the proceedings was granted to the Public Utilities Commissioner of Oregon, the Department of Public Service of the State of Washington, and American Power & Light Company (hereinafter sometimes referred to as "American"), Pacific's parent. The Honorable Ormond R. Bean, Public Utilities Commissioner of Oregon, presided jointly with our Trial Examiner in the proceedings.

THE ISSUES

During the course of the staff examination of the books and records of Pacific, the company itself made further studies and analyses and immediately prior to the hearing submitted to the staffs of both Commissions certain revisions to its

reclassification and original cost studies. These revisions, which were received in evidence at the hearing, brought Pacific into complete accord with the staffs of this Commission and the Oregon Commissioner as to the original cost of electric plant includible in Account 100.1, Electric Plant in Service (\$19,466,147.54); Account 100.2, Electric Plant Leased to Others (\$1,943,804.02); and Account 100.3, Construction Work in Progress (\$87,828.95). The amounts as reclassified in Accounts 100.1 and 100.2 include fees paid by Pacific to American Power & Light Company, Electric Bond & Share Company and Phoenix Utility Company, all associated companies, pursuant to service contracts. These fees are permitted to remain tentatively in these accounts subject to such further consideration as may be deemed warranted at any time in the future.

The discussions herein relate to Pacific's revised reclassification and original cost study, and the disposition of amounts properly includible in Accounts 100.5 and 107. That study has not been entered in Pacific's books of account. We will order the study recorded and then adjusting entries made as hereinafter indicated so as to preserve appropriate accounting sequence.

The items upon which there have been no agreement present the following issues for our determination:

1. Whether the net amount of \$4,121,981.41, being the excess of the recorded cost on the books of Pacific over actual cost to its parent,

American, of property acquired from the latter, is a write-up;

2. The disposition of the amounts properly classifiable in Accounts 100.5 and 107;

3. Whether an amount of \$612,013.78, classified in an adjustment account within Account 108, Other Utility Plant, should be charged to Account 250, Reserve for Depreciation, or to Account 271, Earned Surplus.

JURISDICTION

Pacific concedes and the record shows that it owns and operates facilities used for the transmission of electric energy in interstate commerce and that it sells electric energy at wholesale in interstate commerce. It is, therefore, a "public utility" within the meaning of that term as used in the Federal Power Act.

THE WRITE-UP OF PACIFIC'S PLANT ACCOUNTS

The staffs of the Federal Power Commission and of the Oregon Commissioner have classified a net amount of \$4,121,981.41 in Account 107, Electric Plant Adjustments, as representing a write-up² of electric plant. Pacific contends that this amount

(2) The text of Account 107 reads, in part, as follows:

"* * * Write-ups of electric plant prior to the effective date of this system of accounts shall be recorded herein." Uniform System of Accounts Prescribed for Public Utilities and Licensees, p. 19.

should be classified in Account 100.5, Electric Plant Acquisition Adjustments.

It is undisputed that the amount in question originated as a result of two transactions between Pacific and its parent, American Power & Light Company, which took place in 1910 and 1930, and represents the excess of the net amount recorded by Pacific in respect to the properties transferred over the actual bona fide cost thereof to American.

Sometime near the close of the year 1909 and the early part of 1910, American Power & Light Company decided to move into the Pacific Northwest. Through the acquisition of capital stocks, it acquired control of certain utility properties in the Yakima Valley from the Northwest Light & Water Company and the Yakima Valley Power Company, and also the properties of Astoria Electric Company from Electric Bond & Share Company, which company had organized and controlled American. In March and April, 1910, American organized Yakima-Pasco Power Company and Columbia Power & Light Company, respectively, to take over the Yakima Valley Properties. Pacific concedes that American organized, owned and controlled the Astoria, Columbia and Yakima-Pasco companies.

On June 16, 1910, American organized Pacific for the sole purpose of taking over and operating the properties of Astoria, Columbia and Yakima-Pasco and in July 1910 these properties were transferred by American to Pacific, together with \$499,500 par value of stock of Walla Walla Valley

Railway Company. In exchange therefor Pacific delivered to American all of its outstanding securities consisting of \$1,250,000 par value preferred stock, \$5,997,000 par value of common stock, \$3,200,000 principal amount of First and Refunding Mortgage Bonds and assumed certain underlying bonds and current liabilities. These properties, which had cost American \$6,154,251.34, were set up in Pacific's plant account at \$10,900,000, or \$4,745,748.66³ in excess of their actual cost to American. This \$10,900,000 was nothing but a balancing figure to match par value and principal amount of securities which Pacific had issued to American, together with certain other minor obligations.

The record establishes beyond doubt that Pacific was at all times under the complete control and domination of American. American created Pacific, owned all of its common stock, officered it, capitalized it, and molded its actions at will. The board of directors of Pacific which, on July 23, 1910, "accepted" the offer of American for the transfer of the properties was composed of staff members or officers of American and its parent,

(3) The 1930 transaction between Pacific and American, in effect, reduced the 1910 excess of recorded cost over cost to American by \$623,767.25, to the net amount of \$4,121,981.41. In this transaction, American transferred to Pacific all of the properties of its wholly-owned subsidiary, Inland Power & Light Company, with the exception of the Ariel, Wallowa Falls and Cove hydroelectric projects, together with a large general office building in Portland, Oregon, and all of the outstanding shares of the common stock of Inland.

Electric Bond & Share Company, and persons associated with Bond & Share's law firm, Simpson, Thacher & Bartlett. These directors had been elected by the sole common stockholder, American. The transaction between American and Pacific was veiled through the use of an intermediary, one Weld M. Stevens, associated with Simpson, Thacher & Bartlett.

The complete domination of the July 23, 1910, transfer by American and the voiceless position of Pacific is demonstrated by a letter dated the same day, to Guy W. Talbot, Vice President of Pacific, from Sidney Z. Mitchell, Chairman of American's board, in which it was stated:

"While we (American Power & Light Company) have elected the foregoing as officers in the West, we have not as yet elected any Western directors because we want to keep the full Board here until we get through with all the votes relating to the issuance of bonds, etc. When this is all finished we will elect the permanent Board, a majority of which will be in the West and an Executive Committee the majority of which will be here."

The complete absence of arm's-length bargaining and of independence of judgment is further demonstrated by a telegram dated June 16, 1910 (the very date of incorporation of Pacific) disclosing that the amount at which the properties were to be transferred to Pacific had been decided upon even before Pacific had been organized.

The only reasonable conclusion that can be drawn from all the facts concerning the 1910 transfer of

property is that the transaction represented nothing more than American dealing with itself. The buyers and sellers were subject to common control and were mere tools of the holding company. No one in good conscience could make the claim that the excess of \$4,121,981.41 represents actual, bona fide cost. *Potomac Electric Power Co. v. Public Utilities Comm. of Dist. of Col.*, P. U. R. 1920C, 326, 337-8; *Re New York State Electric and Gas Corporation*, P. U. R. 1933D, 264.

Pacific concedes that a direct mark-up of assets is a write-up, but it would have us believe that the same result accomplished through the device of a new corporate entity validates the excess over cost to the parent seller. We will not permit such a subterfuge to obscure the real transaction or its purpose.⁴ We will look through the form to the substance.

In substance a fictitious increment was added to the accounts in a widely practiced but devious form:

“* * * the same result (write-up) may be, and has been, obtained in a more subtle manner. This was particularly so where holding companies were concerned. Often a write-up was created by causing one company to convey its assets to another company at a price in excess of the figure at which they were bought by the selling company, both com-

(4) “It is the substance of what they do, and not the form in which they clothe their transactions, which must afford the test.” *Electric Bond & Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, 440 (1938).

panies at the time of transfer being subject to common control.”⁵

This aptly described the method followed by American.

If any doubt existed as to the true nature of the excess, an examination of the result to American would dispel it. Upon receipt of Pacific’s securities, American sold the bonds and preferred stock to the public and thereby reimbursed itself for practically all of the initial cost of acquiring the properties transferred to Pacific. Through the retention of all of Pacific’s common stock, which it did not sell to the public, American continued to own and control the properties at only a slight cost to itself. That was the very purpose of the transfer of the properties.

Pacific urges that the alleged “present fair value” of its property fully supports its security structure and therefore contends that the write-up should be permitted to remain in its plant account, or, to

(5) Report of the Committee on Corporate Finance of the National Association of Railroad and Utilities Commissioners, 1940, Appendix, p. 7, “Financing the Utility Property Account.” The article was written by Judge Healy, formerly Chief Counsel for the Federal Trade Commission during its investigation of the financial practices of holding companies and their operating subsidiaries, and now a member of the Securities and Exchange Commission. As Chief Counsel of the F.T.C., Judge Healy had an opportunity to observe at close range the financial manipulations of holding companies which were exposed by that investigation and led to the enactment of the Public Utility Act of 1935.

put it another way, that alleged values have caught up with and absorbed the write-ups and for that reason they should be left undisturbed. We were met by precisely such a contention In the Matter of Northwestern Electric Company, another subsidiary of American Power & Light Company. We disposed of that contention there, saying (Opinion No. 56-A, April 14, 1942) :

“It is asserted that we may not require the amortization of the \$3,500,000 write-up, inasmuch as the alleged present fair value of the property and assets of the Company exceeds the recorded amount for such property and assets, including this amount of \$3,500,000. Reduced to its simplest terms, the Company urges that its property account can be written up at will so long as it is able to support such manipulation by evidence of present fair value. By the same reasoning, it would follow that the plant accounts should be written down every time there is a decrease in plant values. The recognition in the plant accounts of declines in the so-called fair value of properties during the recent long and severe depression would probably have brought disaster to most public utilities. The amounts to be honestly and properly recorded in a utility’s plant account should not be permitted to oscillate with the ebb and flow of economic tides.

“It is thus erroneous to permit the Company’s plant accounts to reflect changing ‘values’ of the nature offered in evidence here and to use such estimates of ‘value’ in lieu of valid cost. Adherence to such a principle, with its ever shifting plant values,

would nullify the effective regulation of public utilities.

“Cost, not value, is the fundamental basis of accounting for public utility plant, as well as for plant of other enterprises. Our System of Accounts, like all accounting systems prescribed by regulatory agencies, is grounded firmly in the cost principle.”

Our views on that subject are unchanged.

We find, therefore, that the amount of \$4,121,981.41 is a write-up of electric plant and is properly classifiable in Account 107, Electric Plant Adjustments.

DISPOSITION OF THE WRITE-UP CLASSIFIABLE IN ACCOUNT 107

We have determined that the excess of \$4,121,981.41 does not represent a valid cost of property and is properly classifiable in Account 107. The provisions of Account 107 require the amounts recorded therein to be disposed of as we may approve or direct. We hold that, in accordance with sound principles of accounting, the amounts should be expunged immediately. We now turn to a consideration of disposition.

In Opinion No. 69, adopted on December 9, 1941, we approved, subject to certain conditions, the merger of Inland Power & Light Company with and into Pacific. In our order we required Pacific to set up a special reserve in the amount of \$1,135,113.91, being an amount by which the cost to Inland of the net assets transferred to Pacific exceeded Pacific's cost of the stock of Inland. We said in

Opinion No. 69 that this "reserve shall be used only for such purposes as this Commission may subsequently approve or direct." The transactions giving rise to the reserve are associated with transactions giving rise to the amount of \$4,121,981.41 classifiable in Account 107. We accordingly find that \$1,135,113.91 of the \$4,121,981.41 should be charged to this special reserve.

We direct that the balance of \$2,986,867.50 (\$4,121,981.41 less \$1,135,113.91) be charged to Earned Surplus; provided, however, that Pacific may at its election charge all or any part of the said \$2,986,867.50 against a Capital Surplus properly created for such purpose.

DISPOSITION OF AMOUNTS CLASSIFIED IN ACCOUNT 100.5, ELECTRIC PLANT AC- QUISITION ADJUSTMENTS

Pacific further classified an amount of \$2,741,591.66 in Account 100.5, Electric Plant Acquisition Adjustments. The staffs concur in this adjustment. It represents the amount paid for operating units or systems over and above the original cost of such operating units or systems acquired. The issue is whether such amount should be amortized over a reasonable period of time or permitted to remain indefinitely in Account 100.5.⁶ In Opinion No. 72,

(6) Account 100.5 provides, among other things, that the amounts recorded therein with respect to each property acquisition "shall be depreciated, amortized, or otherwise disposed of, as the Commission may approve, or direct."

St. Croix Falls Minnesota Improvement Company, et al., we held that similar amounts should be amortized over a reasonable period of time.

In this case there is substantial accord between Pacific⁷ and the staffs of this Commission and the Oregon Commissioner that the \$2,741,591.66 represents payment for intangibles, and we so find. The record shows that it is not at all feasible, and probably not possible, to segregate the intangibles according to their nature. Good will, going value, franchise value and monopoly value tend to merge.⁸ They are all rooted in and are associated with prospective earning power. See "The Law of Goodwill," G. A. D. Preinreich, 11 *Acctg. Rev.* 317, 326 (1936).

It is common knowledge that intangibles have questionable continuing value even in an unregulated industry. They should not be permitted to rest permanently in the accounts of a public utility, and the record of this case shows that the proper accounting treatment is to amortize them rapidly. The accepted and more desirable accounting practice, and

(7) Mr. Neill, Treasurer of Pacific, testified that he thought it was "fair to say that the amount paid by American in excess of the original cost for those properties represented payment for intangibles."

(8) Mr. Neill also testified as follows:

"Q. And all those types of intangible values, while it might be possible to segregate or pigeon-hole them, they all tend to merge?"

"A. I think so. I thought at one time that I would try to divide them up, and do a little speculating; but I found it would be highly speculative and an impracticable thing to do."

the one which we feel should be adhered to by public utilities is set forth in "A Statement of Accounting Principles":

"The writing off of such intangible assets as good will evokes scarcely any protest, even when it is recognized that substantial good will exists. The general distrust of good will and the knowledge that it has been widely used to capitalize exaggerated expectations of future earnings leave an almost universal feeling that the balance sheet looks stronger without it. When actual consideration has been paid for good will, it should appear on the company's balance sheet long enough to create a record of the fact in the history of the company as presented in a series of its annual reports. After that, nobody seems to regret its disappearance when accomplished by methods which fully disclose the circumstances." (p. 14)⁹

The foregoing statement refers to good will, but the authors indicate it is the most important and the typical intangible asset, and that a discussion of it applies to similar intangibles.¹⁰ The amounts involved herein have rested in the accounts ten to thirty years, which is more than adequate to create a record of the fact in the history of the company as contemplated by the foregoing quotation.

There is competent testimony of record that the

(9) "A Statement of Accounting Principles," (1938) Sanders, Hatfield and Moore. Published by American Institute of Accountants.

(10) Ibid, pp. 65-69.

amounts classified in Account 100.5 should be disposed of by annual charges to Account 537, Miscellaneous Amortization, over a period of 10 or 15 years. In view of the fact that the \$2,741,591.66 represents excess over original cost of acquisitions approximately half of which were made as far back as 1910 and have been carried on Pacific's books all those years without any provision having been made, as good accounting practice demands, for writing off any part thereof, we find that an amortization period of 10 years, beginning with 1942, is reasonable.

In disposing of the \$2,741,591.66, we find that such charges should be made to Account 537, Miscellaneous Amortization. St. Croix Cases. Opinion No. 72 (1942).

We find, therefore, that the amount classified in Account 100.5 represents payment for intangibles in excess of original cost and should be disposed of by equal annual charges over a period of ten years to Account 537, Miscellaneous Amortization, commencing with the year 1942.

DISPOSITION OF \$612,013.78 CLASSIFIED IN AN ADJUSTMENT ACCOUNT WITHIN ACCOUNT 108, OTHER UTILITY PLANT

In the course of the preparation of its reclassification and original cost studies, Pacific discovered that certain gas, water and railway properties had been

retired at an aggregate amount of \$612,013.78¹¹ less than the book cost. Pacific sought to correct this under-retirement by a charge to its depreciation reserves in the year 1940, although the balance existing in the company's depreciation reserves for non-electric properties amounted to only \$87,712.38.

The staffs of this Commission and the Oregon Commissioner contend that the 1940 charge to the depreciation reserve should be reversed, the amount of the under-retirement established in an adjustment account within Account 108, Other Utility Plant, and then disposed of by a charge of \$87,712.38 to Account 250, Reserve for Depreciation, and a charge of \$524,301.40 to Account 271, Earned Surplus. In other words, the Commissions' staffs contend the \$524,301.40 represents a loss on the sale of non-electric properties for which no provision existed in Pacific's depreciation reserve.

Pacific agrees that this amount of \$524,301.40 is properly chargeable to Account 271, Earned Surplus, but contends its depreciation reserve for its electric property in the State of Washington is in excess of present requirements in an amount sufficient to absorb the under-retirement, and that a charge to that reserve is, in effect, a charge to surplus, since surplus is understated to the extent of the alleged over-accrual.

(11) Pacific first determined that the under-retirement amounted to \$629,525.89 and the 1940 charge to the reserve was in that amount, but Pacific now concedes the correct adjustment, wherever it may be charged, is \$612,013.78.

The allowed over-adequacy of Pacific's depreciation reserve for electric properties in the State of Washington would not be determinative of the issues. There is good reason to hold that where a reserve has been provided for electric properties, chiefly by charges to electric expenses, the resulting reserve even though excessive should not be diverted in whole or in part to absorb a loss in some other department.

Assuming, *arguendo*, however, that Pacific's contention is correct in principle, it has failed to demonstrate the reserve for the electric property in the State of Washington is excessive. On the contrary, the evidence would appear to support the conclusion that the reserve is not excessive. For example, though Pacific's electric systems in the States of Oregon and Washington are substantially similar in type, character, and condition, the balance in the Oregon reserve is approximately one and one-half times greater percentagewise than the balance in the reserve earmarked for the Washington properties. Yet it is the Washington rather than the Oregon reserve that is claimed to be excessive. Other facts in the record also tend to show the total depreciation reserve for electric properties is not excessive.

In the light of the evidence, we cannot acquiesce in a charge-off of the amount in issue to the depreciation reserve, except to the extent of \$87,712.38 for which provision has been made.

We find, therefore, that the under-retirement should be corrected by requiring Pacific to transfer

from Account 250 to Account 271, Earned Surplus, the amount of \$524,301.40.

ACCOUNTING ADJUSTMENTS CONCEDED BY PACIFIC

(1) Additional Organization Expense

An amount of \$1,090.71 was included within Account 301, Organization, by the staffs prior to the hearing. The evidence offered at the hearing showed that in connection with the organization of Pacific expenditures of \$5,650.39 were incurred. We find, therefore, that an additional amount of \$4,559.68 should be established in Account 301, Organization, within Account 100.1, Electric Plant in Service, by transfer of such amount from Account 100.5, Electric Plant Acquisition Adjustments, in which latter account it has been included in Pacific's reclassification and original cost studies.

(2) Pacific's Investment in Stock of Inland Power & Light Company

In 1930, Pacific acquired the common capital stock of Inland in a "basket" transaction and included the amount thereof in its plant accounts. The evidence shows that cost to Pacific of such stock was \$232,002.22, which amount Pacific has established in Account 111, Investment in Associated Companies. The adjustment is approved.

(3) Unamortized Debt Discount and Expense

Pacific reclassified \$2,024,993.99 from its plant accounts to Account 140, Unamortized Debt Discount

and Expense, representing discount and expense suffered by American in disposing of Pacific's bonds received in the 1910 and 1930 transactions. The record shows that an additional amount of \$5,733.65, representing certain expenses incurred in connection with the bonds issued by Pacific to American in 1910, should be added to the foregoing amount, increasing it to \$2,030,727.64. (Pacific should have established the \$2,024,993.99, together with the amount of \$5,733.65, in Account 107 pending Commission approval of the transfer to Account 140.)

Of the \$2,030,727.64, an amount of \$454,349.90 relates to an indebtedness which matured in 1930 and was replaced by a new bond issue. This amount should be charged off to Account 271, Earned Surplus.

The balance of \$1,576,377.74 relates to Pacific's presently outstanding bonds which mature on August 1, 1955. As of December 31, 1941, 137/300 of the life of the bonds had expired, hence a pro rata portion of the unamortized debt discount and expense, \$719,875.46, should be charged off at once to Account 271, Earned Surplus, and Pacific should include in its income account for 1942 and subsequent years the proportionate part of the unamortized debt discount and expense applicable to such years until the entire amount is extinguished.

We find that \$5,733.65 should be transferred from Account 100.5 through Account 107, to Account 140; and \$1,174,225.36 from Account 140 to Account 271, Earned Surplus.

(4) Capital Stock Expense

Pacific has classified an amount of \$36,009.72, representing capital stock expense, in Account 151, Capital Stock Expense. While such amount should first have been established in Account 107, pending Commission approval of the transfer to Account 151, the result is correct and the adjustment is approved.

(5) Reinstatement of Fruitvale Canal

In 1932, the Fruitvale generating station and canal were retired by Pacific. Subsequently it was discovered that the canal was still used to supply water for irrigation to a number of customers under contract. The estimated amount of the retirement was \$229,166.81, the amount being predicated upon reproduction values. The staffs, pending a proper determination of cost, credited Account 250, Reserve for Depreciation, and reinstated the amount in Account 100.6, Electric Plant in Process of Reclassification.

The original cost of the canal property was determined to be \$188,136.86, and Pacific established this amount in Account 110, Other Physical Property, with a corresponding credit to Account 250, Reserve for Depreciation, leaving charged to the reserve \$41,029.95 (the difference between \$229,166.81 and \$188,136.86). The Company erroneously reduced Account 100.5 by this excessive retirement of \$41,029.95.

We find that the appropriate accounting procedure requires the establishment of \$188,136.86 in Account 110, and a transfer of \$41,029.95 from Account 250 to Account 100.5.

(6) Discount on Preferred Stock

In the 1910 transaction there was incurred a discount on preferred stock of \$161,500 and in the 1930 transaction \$25,000 which had never been reflected on Pacific's books. Pacific agrees that such discount should be reflected on its books. Accordingly, we find that \$186,500 should be transferred from Account 100.5, through Account 107, to Account 150, Discount on Capital Stock.

(7) Improper Charges to Production Plant

Sometime in 1912 Pacific commenced construction of a hydroelectric generating station on Hood River. The work was suspended in 1913 but construction costs were not closed to plant account until 1919. Included therein was \$44,769.73, representing interest accruals in excess of the amount applicable to the construction period, and \$9,734.80, representing charges for labor and other items incurred from 1914 to 1919 and improperly charged to plant account.

These charges, totaling \$54,504.53, were partially offset by improper credits for sales of material and equipment to the extent of \$11,949.85, thus reducing the improper charges to \$42,554.68.

Pacific has established this amount of \$42,554.68 in Account 107. We find such sum should be disposed of by a charge to Account 271, Earned Surplus.

(8) Miscellaneous Costs Walla Walla Valley Railway Company

In the organization of Walla Walla Valley Rail-

way Company by American in 1910, certain costs were incurred amounting to \$191.75. This amount was classified in Account 107 by the staffs and Pacific concedes that this is a proper classification. As Pacific disposed of its interest in the Walla Walla Valley Railway Company in 1921, the amount should be disposed of by a charge to Account 271, Earned Surplus.

AFFILIATED COMPANY FEES

The staff report, Exhibit No. 16 in this proceeding, shows that large fees paid by respondent to its parent companies and affiliated service companies have been charged to its plant accounts. It is likely that such fees contain an element of profit to the affiliates which should not be allowed. The staffs recommend that the fees be permitted to remain tentatively in the accounts because of the substantial additional analysis, particularly of the books of the affiliated companies, which would be required to ascertain the appropriate adjustments and the delay which would ensue.

We have consistently held that services rendered to licensees and public utilities by affiliates should be at cost and that all affiliated company profits included in fees and other charges should be removed from the plant accounts.¹² We take notice of the

(12) Opinion No. 4, Alabama Power Company; Opinion No. 11, Louisville Gas and Electric Company; Opinion No. 68, Pennsylvania Power & Light Company; Opinion No. 72, St. Croix Falls Minnesota Improvement Company, et al; Opinion No. 78, Puget Sound Power and Light Company.

fact that many other public utility subsidiaries of Electric Bond & Share Company have included in their plant accounts large fees for alleged services by that holding company, its sub-holding companies and affiliated service companies. The costs related to the fees for such alleged services which must be determined are not segregated by subsidiaries on the books of such holding or service companies. It would therefore seem more practical to examine the books and records of the holding companies and the affiliated service companies and make the necessary adjustments to all the public utility subsidiaries of Electric Bond & Share Company at one time, rather than to make the necessary studies and adjustments as each case arises. This procedure will prevent the over-lapping of effort and will insure more uniform determinations.

Accordingly, we reserve for a future time the investigation and studies necessary to eliminate from the plant accounts of the respondent the amounts included therein as profits on fees of approximately \$1,034,000 paid to its holding companies and affiliated service companies.

In our order of July 1, 1941, respondent was ordered to show cause why the Commission should not institute appropriate proceedings against the company, its officers or directors, for failure to comply with the provisions of Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's Order dated May 11, 1937.

Respondent's officers and employees in the meantime have complied with our requirements and have shown an awareness of the obligations imposed upon them by the Federal Power Act. We do not believe any good purpose would be served by instituting further proceedings with respect to such matter.

An appropriate order will be issued in accordance with this opinion.

LELAND OLDS,

Chairman

CLAUDE L. DRAPER,

Commissioner

BASIL MANLY,

Commissioner

CLYDE L. SEAVEY,

Commissioner

I concur in result only.

JOHN W. SCOTT,

Commissioner

Dated at Washington, D. C., this 24th day of November, 1942.

LEON M. FUQUAY,

Secretary.

[Title of Commission and Cause.]

Commissioners Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

November 24, 1942

ORDER DIRECTING ACCOUNTING ENTRIES
AND DISPOSITION OF AMOUNTS IN
ACCOUNTS 100.5 AND 107

Upon consideration of the previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 84 with Findings, which is incorporated by reference as a part hereof;

The Commission orders that:

Pacific Power & Light Company (hereinafter referred to as "Pacific") record in its accounts the reclassification and adjusting entries proposed in its revised reclassification and original cost studies; and

The Commission further orders that:

(A) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 107, Electric Plant Adjustments, the amount of \$4,121,981.41;

(B) Pacific dispose of the amount of \$4,121,981.41 established in Account 107, Electric Plant Adjustments, under Paragraph (A) above, by charging \$1,135,113.91 of that amount to the special reserve created pursuant to the Commission's Opinion No. 69; and by charging the balance of \$2,986,867.50 to Account 271, Earned Surplus; provided, however,

that Pacific may charge all or any part of said \$2,986,867.50 against a Capital Surplus properly created for that purpose;

(C) Pacific remove the amount of \$4,559.68 from Account 100.5, Electric Plant Acquisition Adjustments, and transfer said amount to Account 301, Organization, within Account 100.1, Electric Plant in Service;

(D) Pacific remove from Account 250, Reserve for Depreciation, and transfer to Account 100.5, Electric Plant Acquisition Adjustments, the amount of \$41,029.95, representing the over-retirement of the Fruitvale Canal;

(E) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 150, Discount on Capital Stock (through Account 107), the amount of \$186,500, representing discount on preferred stock incurred by Pacific in 1910 and 1930;

(F) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and charge to Account 271, Earned Surplus (through Account 107), the amount of \$191.75, representing costs incurred in connection with the organization of Walla Walla Valley Railway Company;

(G) Pacific remove the amount of \$5,733.65 from Account 100.5, Electric Plant Acquisition Adjustments, and transfer said amount to Account 140, Unamortized Debt Discount and Expense (through Account 107);

(H) Pacific dispose of the amount of \$2,741,591.66 classified in Account 100.5, Electric Plant Acquisi-

tion Adjustments, by charging said amount to Account 537, Miscellaneous Amortization, in ten equal annual charges, commencing with the calendar year 1942;

(I) The transfer by Pacific of \$2,024,993.99 to Account 140 is approved;

(J) Pacific remove the amount of \$1,174,225.36 from Account 140 and charge said amount to Account 271, Earned Surplus, and account for the balance remaining in Account 140 in accordance with Balance Sheet Instruction 6-C;

(K) Pacific remove from Account 250, Reserve for Depreciation, and charge to Account 271, Earned Surplus (through Account 107), the amount of \$524,301.40, representing the loss, in excess of the applicable reserve for depreciation, from the sale or other disposition of non-electric properties prior to 1936;

(L) Pacific remove from Account 107 and charge to Account 271, Earned Surplus, the amount of \$42,554.68, representing improper charges to production plant in connection with the construction of a hydro-electric generating station on Hood River;

(M) The transfer of \$36,009.72, representing Capital Stock Expense, from Account 107 to Account 151, Capital Stock Expense, is approved;

(N) The transfer of \$232,002.22, representing investment in the stock of Inland, from Account 107, to Account 111, Investment in Associated Companies, is approved;

(O) Pacific file with the Commission on or before December 31, 1942, certified copies of the entries

required by Paragraphs (A) to (N), inclusive, of this order; and on or before March 15 of each year thereafter the entries required by Paragraph (H) of this order until the entire amount in Account 100.5 has been disposed of;

(P) The provisions of this order are not to be construed as dispensing with the necessity of full compliance with the requirements of the Public Utility Holding Company Act of 1935 and the rules, regulations and orders issued by the Securities and Exchange Commission.

By the Commission.

LEON M. FUQUAY,
Secretary.

[Title of Commission and Cause.]

APPLICATION FOR REHEARING

In respect of Paragraphs (A), (B), and (H) of Commission's Order of November 24, 1942.

Pacific Power & Light Company (herein referred to as Pacific), being aggrieved by certain provisions and requirements of the Order of the Commission herein, dated November 24, 1942, but issued on December 3, 1942, namely, the provisions and requirements of Paragraphs (A), (B), and (H) of said Order, respectfully applies, pursuant to the provisions of Section 313 (a) of the Federal Power Act (herein referred to as the Act), for a rehearing by the Commission herein upon the grounds hereinafter specifically set forth.

I.

Said Paragraphs of said Order direct that:

“(A) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 107, Electric Plant Adjustments, the amount of \$4,121,981.41;

(B) Pacific dispose of the amount of \$4,121,981.41 established in Account 107, Electric Plant Adjustments, under Paragraph (A) above, by charging \$1,135,113.91 of that amount to the special reserve created pursuant to the Commission’s Opinion No. 69; and by charging the balance of \$2,986,867.50 to Account 271, Earned Surplus; provided, however, that Pacific may charge all or any part of said \$2,986,867.50 against a Capital Surplus properly created for that purpose;

(H) Pacific dispose of the amount of \$2,741,591.66 classified in Account 100.5, Electric Plant Acquisition Adjustments, by charging said amount to Account 537, Miscellaneous Amortization, in ten equal annual charges, commencing with the calendar year 1942;”

II.

Application for rehearing herein in respect of said Paragraph (A) is based upon the following grounds:

(1) The Commission erred in not classifying in Account 100.5, Electric Plant Acquisition Adjustments, the \$4,121,981.41 referred to in said Paragraph (A), since Pacific actually paid or incurred said amount of acquisition cost by the issuance of

its securities for properties and rights adjudged by Pacific to have a value equivalent to the amount of such securities so issued, and at a time when the exercise of such judgment was, and thereafter became, controlling as to the cost of the property so acquired and as to the validity of the securities issued in exchange therefor, as fully paid and non-assessable securities; and, by definition of Account 100.5, such acquisition costs so incurred is required to be classified in said Account 100.5.

(2) The Commission erred, in so ordering the reclassification of said \$4,121,981.41 in Account 107, instead of in Account 100.5 with other Electric Plant Acquisition Adjustments, by ignoring and by failing to take into account the great potential values in excess of cost to American Power & Light Company (herein referred to as American), which were inherent in the properties and enterprises turned over by American to Pacific in 1910, as envisaged by the organizers of Pacific at that time, and the existence of which values has been fully demonstrated by the record of Pacific's growth and of its performance in the interests of consumers and the public from 1910 to date.

(3) The Commission erred in failing to recognize that American was under no obligation in 1910, when all of said \$4,121,981.41 of acquisition cost was incurred, to part with or to transfer the properties and rights involved in its transactions with Pacific for a consideration aggregating less than American's appraisal of the fair value of such properties and rights, irrespective of their actual

cost to American; and the Commission's characterization of such acquisition cost as a "write-up" affords no lawful basis for differentiating such cost from other acquisition costs which are required by the Commission's Uniform System of Accounts to be classified in Account 100.5, Electric Plant Acquisition Adjustments.

(4) The Commission erred, while purporting to base its ordered reclassification in Account 107 of said \$4,121,981.41 of acquisition cost on the costs incurred by American, in disregarding and in failing to recognize the approximately \$4,000,000 of costs incurred by American upon the proposed Priest Rapids power development in furtherance and for the benefit of the properties and the enterprise transferred by it to Pacific in 1910.

III.

Application for rehearing herein in respect of Paragraph (B) of said Order is based upon the following grounds:

(1) The Commission erred in ordering Pacific to "dispose of" said amount of \$4,121,981.41 of acquisition cost, whether reclassified in Account 100.5 as Pacific maintains should be done, or in Account 107 as ordered by the Commission, for the reason that the Commission has no authority under the Act to require the elimination from the balance sheet of a public utility of asset values exceeding the Commission's determination of "original" or other cost of such items.

(2) The Commission erred in assuming that its authority under the Act extends retroactively to the

elimination from the accounts of a public utility of asset items lawfully established in the accounts of such public utility long prior to the time when the Commission was granted any authority with respect to the accounts of such utility.

(3) The Commission erred in ignoring, and in refusing to permit the introduction of, competent, relevant, and properly proffered evidence on the issue of disposition, which fully establishes that the fair value of Pacific's assets is equal to or in excess of the recorded book value thereof.

(4) The Commission erred, in violation of the vested property and constitutional rights of Pacific and its stockholders, preferred and common, in directing the elimination in whole or in part of Pacific's Earned Surplus created from lawfully earned income, thereby preventing the declaration or payment of dividends lawfully earned upon the capital stock of the Company, and without regard or consideration for the value of Pacific's assets.

(5) The Commission erred in suggesting or implying by said Paragraph (B) that Pacific has a practicable means of creating a Capital Surplus against which all or any part of said \$4,121,981.41 may be charged by Pacific, and thereby of avoiding the confiscatory and destructive effect upon Pacific and its stockholders of the charge to Earned Surplus ordered by the Commission by said Paragraph (B).

IV.

Application for rehearing herein in respect of Paragraph (H) of said Order is based upon the following grounds:

(1) Upon the grounds hereinbefore set forth under subparagraphs (1), (2), (3), and (4) of paragraph III hereof.

(2) Upon the ground that the \$2,741,591.66 of the amount in Pacific's Account 100.5, ordered by the Commission to be disposed of by amortization in ten equal annual charges to or deductions from income, represents admitted actual most of and investment in Pacific's present assets, whether or not such assets be characterized as "intangible" assets; and as such, said \$2,741,591.66 of admitted actual cost and investment may not lawfully be required to be "written off" or disposed of, so long as the assets purchased at such cost remain the property of Pacific.

(3) Upon the ground that to require such amortization, of said \$2,741,591.66 of admitted actual cost and investment in Pacific's assets, would unlawfully and unconstitutionally deprive Pacific of the right to declare and pay, and its stockholders, preferred and common, of the right to receive, dividends lawfully earned upon Pacific's preferred and common stocks, to the extent that such amortization at the rate of \$274,159.17 per year for ten years, beginning with the year 1942, will necessarily divert such lawful earnings to such other arbitrarily and unlawfully prescribed purpose.

(4) Upon the ground that such amortization of said \$2,741,591.66 of admitted actual investment constitutes an unjust and unlawful discrimination by the Commission against Pacific and against Pacific's preferred stockholders, in that in the case of

Northwestern Electric Company (Docket No. IT-5642) the Commission, in dealing with \$3,500,000 of alleged "write-up" classified by it in Account 107 (which according to the Commission's standards is not entitled to recognition comparable with amounts properly classified in Account 100.5), ordered that such alleged "write-up" be disposed of by charges to the income available to said utility after preferred dividend appropriations, which the Commission's Opinion No. 56-A dated April 14, 1942, in that proceeding, and its recent brief on the appeal now pending before the Circuit Court of Appeals for the 9th Circuit, indicate was intended by the Commission to mean after preferred dividend requirements, a discrimination which is highly prejudicial to Pacific and to its preferred stockholders, and for which there can be no lawful justification.

V.

As reported to the Commission in Pacific's Application of December 22, 1942, for a Stay of said Order with respect to the requirements of said Paragraphs (A), (B), and (H), Pacific has already made or is currently making all of the entries required by the various other provisions of said Order of November 24, 1942, and will have filed with the Commission on or before December 31, 1942, certified copies of all such entries; and this application is limited to the aforementioned provisions of said Order by which Pacific deems itself aggrieved as set forth herein.

Pacific respectfully submits that the grounds hereinbefore set forth in this application for re-

hearing are fully sustained by the record herein, by the Act under which the Commission derives such authority as it possesses with respect to Pacific's accounts, and by the Constitution of the United States, particularly Amendment V thereof; and Pacific therefore requests that such rehearing be granted, and that, following such rehearing, the Commission shall enter its further order herein relieving Pacific from the provisions and requirements of said Paragraphs (A), (B), and (H) of said Order of November 24, 1942.

Respectfully,

PACIFIC POWER & LIGHT
COMPANY

WILL T. NEILL

Vice President

LAING GRAY & SMITH

JOHN A. LAING

Public Service Building

Portland, Oregon

Attorneys for Pacific Power & Light Company
(Duly Verified.)

Federal Power Commission. Dec. 31, 1942. Received.

[Title of Commission and Cause.]

APPLICATION FOR REHEARING

In respect of Paragraphs (A), (B), and (H) of
Commission's Order of November 24, 1942.

American Power & Light Company (herein re-

ferred to as American), the owner of all the outstanding common stock of Pacific Power & Light Company (herein referred to as Pacific), being aggrieved by certain provisions and requirements of the Order of the Commission herein, dated November 24, 1942, but issued on December 3, 1942, namely the provisions and requirements of Paragraphs (A), (B), and (H) of said Order, respectfully applies, pursuant to the provisions of Section 313 (a) of the Federal Power Act (herein referred to as the Act), for a rehearing by the Commission herein upon the grounds hereinafter specifically set forth.

I.

Said Paragraphs of said Order direct that:

“(A) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 107, Electric Plant Adjustments, the amount of \$4,121,981.41;

(B) Pacific dispose of the amount of \$4,121,981.41 established in Account 107, Electric Plant Adjustments, under Paragraph (A) above, by charging \$1,135,113.91 of that amount to the special reserve created pursuant to the Commission's Opinion No. 69; and by charging the balance of \$2,986,867.50 to Account 271, Earned Surplus; provided, however, that Pacific may charge all or any part of said \$2,986,867.50 against a Capital Surplus properly created for that purpose;

(H) Pacific dispose of the amount of \$2,741,-

591.66 classified in Account 100.5, Electric Plant Acquisition Adjustments, by charging said amount to Account 537, Miscellaneous Amortization, in ten equal annual charges, commencing with the calendar year 1942;”

II.

Application for rehearing herein in respect of said Paragraph (A) is based upon the following grounds:

(1) The Commission erred in not classifying in Account 100.5, Electric Plant Acquisition Adjustments, the \$4,121,981.41 referred to in said Paragraph (A), since Pacific actually paid or incurred said amount of acquisition cost by the issuance of its securities for properties and rights adjudged by Pacific to have a value equivalent to the amount of such securities so issued, and at a time when the exercise of such judgment was, and thereafter became, controlling as to the cost of the property so acquired and as to the validity of the securities issued in exchange therefor, as fully paid and non-assessable securities; and, by definition of Account 100.5, such acquisition cost so incurred is required to be classified in said Account 100.5.

(2) The Commission erred, in so ordering the reclassification of said \$4,121,981.41 in Account 107, instead of in Account 100.5 with other Electric Plant Acquisition Adjustments, by ignoring and by failing to take into account the great potential values in excess of cost to American, which were inherent in the properties and enterprises turned over by American to Pacific in 1910, as envisaged

by the organizers of Pacific at that time, and the existence of which values has been fully demonstrated by the record of Pacific's growth and of its performance in the interests of consumers and the public from 1910 to date.

(3) The Commission erred in failing to recognize that American was under no obligation in 1910, when all of said \$4,121,981.41 of acquisition cost was incurred, to part with or to transfer the properties and rights involved in its transactions with Pacific for a consideration aggregating less than American's appraisal of the fair value of such properties and rights, irrespective of their actual cost to American, but was under a positive obligation to obtain the full value in accordance with such appraisal since the transfer contemplated that persons other than security holders of American would acquire an interest in Pacific; and the Commission's characterization of such acquisition cost as a "write-up" affords no lawful basis for differentiating such cost from other acquisition costs which are required by the Commission's Uniform System of Accounts to be classified in Account 100.5, Electric Plant Acquisition Adjustments.

(4) The Commission erred, while purporting to base its ordered reclassification in Account 107 of said \$4,121,981.41 of acquisition cost on the costs incurred by American, in disregarding and in failing to recognize the approximately \$4,000,000 of costs incurred by American upon the proposed Priest Rapids power development in furtherance

and for the benefit of the properties and the enterprise transferred by it to Pacific in 1910.

III.

Application for rehearing herein in respect to Paragraph (B) of said Order is based upon the following grounds:

(1) The Commission erred in ordering Pacific to "dispose of" said amount of \$4,121,981.41 of acquisition cost, whether reclassified in Account 100.5 as Pacific maintains should be done, or in Account 107 as ordered by the Commission, for the reason that the Commission has no authority under the Act or the Constitution of the United States to require the elimination from the asset side of the balance sheet of a public utility of any sum fully supported by the present fair value of its assets, although in excess of the Commission's determination of "original" or other cost.

(2) The Commission erred in assuming that its authority under the Act extends retroactively to the elimination from the accounts of a public utility of asset items lawfully established in the accounts of such public utility long prior to the time when the Commission was granted any authority with respect to the accounts of such utility.

(3) The Commission erred in ignoring, and in refusing to permit the introduction of, competent, relevant, and properly proffered evidence on the issue of disposition, which fully establishes that the fair value of Pacific's assets is equal to or in excess of the recorded book value thereof.

(4) The Commission erred, in violation of the vested property and constitutional rights of Pacific and its stockholders, preferred and common, in directing the elimination in whole or in part of Pacific's Earned Surplus created from lawfully earned income, thereby preventing the declaration or payment of dividends lawfully earned upon the capital stock of the Company, and without regard or consideration for the value of Pacific's assets.

(5) The Commission erred in suggesting or implying by said Paragraph (B) that Pacific has a practicable means of creating a Capital Surplus against which all or any part of said \$4,121,981.41 may be charged by Pacific, and thereby of avoiding the confiscatory and destructive effect upon Pacific and its stockholders of the charge to Earned Surplus ordered by the Commission by said Paragraph (B), since the creation of such a capital surplus would require American involuntarily to renegotiate its original sales contracts and to surrender vested rights of long standing without consideration and in violation of the Fifth Amendment to, and Sections 1 and 2 of Article III of, the Constitution.

IV.

Application for rehearing in respect of Paragraph (H) of said Order is based upon the following grounds:

(1) Upon the grounds hereinbefore set forth under subparagraphs (1), (2), (3), and (4) of paragraph III hereof.

(2) Upon the ground that the \$2,741,591.66 of the amount in Pacific's Account 100.5, ordered by

the Commission to be disposed of by amortization in ten equal annual charges to or deductions from income, represents admitted actual cost of and investment in Pacific's present assets, whether or not such assets be characterized as "intangible" assets; and as such, said \$2,741,591.66 of admitted actual cost and investment may not lawfully be required to be "written off" or disposed of, so long as the assets purchased at such cost remain the property of Pacific.

(3) Upon the ground that to require such amortization, of said \$2,741,591.66 of admitted actual cost and investment in Pacific assets, would unlawfully and unconstitutionally deprive Pacific of the right to declare and pay, and its stockholders, preferred and common, of the right to receive, dividends lawfully earned upon Pacific's preferred and common stocks, to the extent that such amortization at the rate of \$274,159.17 per year for ten years, beginning with the year 1942, will necessarily divert such lawful earnings to such other arbitrarily and unlawfully prescribed purpose.

V.

Application for rehearing herein in respect of Paragraphs (A), (B) and (H) is further based on the following grounds:

(1) The Commission in issuing such orders has exceeded the scope of its regulatory authority over Pacific under the Act and in contravention of the Fifth and Tenth Amendments of the Constitution and Sections 1 and 2 of Article III of the Constitution and has infringed upon the regulatory author-

ity reserved to the States by said Act and the Tenth Amendment to the Constitution.

(2) The Commission in issuing such orders has required Pacific to record its assets on its books at less than their present fair value and to the extent the Commission makes use of such revised books of account as a basis for regulating rates and dividends and for purposes of condemnation, it will exceed the powers granted to it under the Act and will violate the Fifth and Tenth Amendments to the Constitution and Sections 1 and 2 of Article III of the Constitution.

(3) The Commission erred in failing to find (a) that the costs of the various businesses, properties and values inherent in the acquisition transactions between Pacific and American was the amount recorded on the books of Pacific, (b) that the amounts so recorded are fully covered and represented by assets having a value in excess of such amounts, and (c) that the entire difference between the original cost and the cost recorded on the books of Pacific should be placed in Account 100.5; and further erred in ordering the classification of a portion of such difference in Account 107, as required by Paragraph (A) of said Order, and in ordering the disposition of any part of said difference, as required by Paragraphs (B) and (H) of said Order, on the grounds that such failures to find and such orders are arbitrary and capricious, violate the Fifth and Tenth Amendments to the Constitution, constitute the taking of property for a public purpose without payment of just compensa-

tion and are contrary to the provisions of Sections 1 and 2 of Article III of the Constitution and the Constitutional guarantees of due process and of the judicial determination of fundamental questions of fact and law.

American respectfully submits that the grounds hereinbefore set forth in this application for rehearing are fully sustained by the record herein, by the Act under which the Commission derives such authority as it possesses with respect to Pacific's accounts, and by the Constitution of the United States; and American therefore requests that such rehearing be granted, and that, following such rehearing, the Commission shall enter its further order herein relieving Pacific from the provisions and requirements of said Paragraphs (A), (B), and (H) of said Order of November 24, 1942.

Respectfully,

AMERICAN POWER & LIGHT
COMPANY

By H. L. ALLER
President

REID & PRIEST

2 Rector Street
New York, N. Y.

WHITE & CASE

14 Wall Street
New York, N. Y.

Attorneys for American Power & Light
Company, Intervenor.

(Duly Verified.)

Federal Power Commission. Extra Copy. Dec. 31,
1942. Received.

United States of America
Federal Power Commission

Commissioners Leland Olds, Chairman, Claude L.
Draper, Basil Manly, John W. Scott and Clyde
L. Seavey.

January 13, 1943

Docket No. IT-5611

In the Matter of

PACIFIC POWER & LIGHT COMPANY

ORDER DENYING REHEARING

Upon consideration of the previous orders in this proceeding, all evidence adduced of record, the briefs and other documents filed, Opinion No. 84 and the order of November 24, 1942, and the applications for rehearing filed on December 31, 1942, by Pacific Power & Light Company and American Power & Light Company; and

It appearing that the assignments of error do not raise any new questions of fact or of law which have not been previously raised by Pacific and American and previously considered by the Commission prior to its adoption of the order in question;

The Commission orders that:

The applications for rehearing of Pacific Power & Light Company and American Power and Light Company be and they are hereby denied; provided, however, that the consideration of American's application for rehearing and the Commission's action

thereon shall not be construed as recognition by the Commission that American's interests are such that it may be "aggrieved by an order issued by the Commission" as provided in Section 313 of the Federal Power Act.

By the Commission.

LEON M. FUQUAY,
Secretary.

Pacific Power & Light Company
Public Service Building

Portland, Oregon

December 24, 1942

Federal Power Commission
Washington, D. C.

Gentlemen:

Enclosed are certified copies of the entries posted on the books of this Company to "record in its accounts the reclassification and adjusting entries proposed in its revised reclassification and original cost studies", in accordance with the requirements of Opinion No. 84 and Order of the Federal Power Commission, dated November 24, 1942, in Docket No. IT-5611, together with copy of reconciliation sheet pertaining thereto.

These entries cover all of the various reclassifications and entries required by said Order, except those required by Paragraphs (A), (B) and (H), with respect to which the Company is currently

applying for a rehearing, and for a stay of these provisions pending rehearing and final determination.

Very truly yours,

J. G. HAWKINS

Secretary and Treasurer

JGH:ar

Encls.

Pacific Power & Light Company
Public Service Building
Portland, Oregon

Certificate Re Entries
Recorded Pursuant to Requirements of
Order Dated November 24, 1942, in
FPC Docket No. IT-5611

To the Federal Power Commission:

I, J. G. Hawkins, Treasurer of Pacific Power & Light Company, Do Hereby Certify that the attached are full and true copies of the several accounting entries, each identified by the description thereof, which have been made by said Company on its books as of the several dates shown for said entries, by me or under my supervision as Treasurer of said Company, pursuant to or in accordance with the requirements of Opinion No. 84 and

Order of the Federal Power Commission in Docket No. IT-5611, dated November 24, 1942, together with copy of reconciliation sheet pertaining thereto, namely:

Journal Entry Voucher No. 7726, dated December 31, 1941

Journal Entry Voucher No. 7727, dated December 31, 1941

Journal Entry Voucher No. 7728, dated December 31, 1941

Journal Entry Voucher No. 9476, dated December 17, 1942

Journal Entry Voucher No. 9477, dated December 17, 1942

Witness my hand and the seal of said corporation this 24th day of December, 1942.

[Seal]

J. G. HAWKINS

Pacific Power & Light Company

JOURNAL ENTRY VOUCHER No. 7726

December 31, 1941

	Debit	Credit
	\$	\$
Miscellaneous Debits to Surplus,		
414	42,746.43	
To		
Utility Plant in Process		
of Reclassification, 100.6		42,476.43
To record accounting adjustment required in reclassification of utility plant account as prescribed in System of Accounts effective January 1, 1937, dis-		

closed in record of Federal Power Commission cause Docket IT-5611, but not heretofore recorded on the books of account of the Company.

Expenditures erroneously charged to plant account in connection with construction of Powerdale, Oregon, hydro-electric generating plant\$42,554.68

Expenditures incurred in acquisition of investment in Walla Walla Valley Railway Company erroneously included in utility plant account and not retired upon sale of investment\$191.75

This entry recorded pursuant to authorization and approval of the Company's board of directors as stated in minutes of meeting of said board held January 8, 1942.

Certified Correct:

/s/ CLAUSE R. GROTH

Approved:

/s/ J. G. HAWKINS

Pacific Power & Light Company

JOURNAL ENTRY VOUCHER No. 7727

December 31, 1941

	Debit	Credit
	\$	\$
Unamortized Debt Discount and Expense, 140	2,030,727.64	
Dr To		
Utility Plant in Process of Reclassification, 100.6		1,053,117.15
Investments in Affiliated Interests, 111		977,610.49

To record the unamortized bond discount and expense disclosed in the original cost study filed with the Federal Power Commission but not heretofore recorded as such on the books.

First and Refunding Mortgage
5% Gold Bonds issued 8/1/10
due 8/1/30\$454,349.90

First Mortgage & Prior Lien
Gold Bonds 5% Series issued
8/1/30 due 8/1/55 \$1,576,377.74

This entry recorded pursuant to authorization and approval of the Company's board of directors as stated in minutes of meeting of said board held January 8, 1942.

Certified Correct:

/s/ CLAUSE R. GROTH

Approved:

/s/ J. G. HAWKINS

Pacific Power & Light Company

JOURNAL ENTRY VOUCHER No. 7728

December 31, 1941

	Debit	Credit
	\$	\$
Miscellaneous Debits to Surplus,		
414	1,111,173.96	
Amortization of Debt Discount		
and Expense, 531	63,055.11	
Dr To		
Unamortized Debt Discount		
and Expense, 140.....		1,174,229.07

To record amortization of bond discount and expense applicable to the following issues:

First and Refunding Mortgage
 5% Gold Bonds issued 8/1/10
 due 8/1/30 (entire) \$454,349.90

First Mortgage & Prior Lien
 Gold Bonds 5% Series issued
 8/1/30 due 8/1/55 (137/300
 of \$1, 576,377.74) \$719,879.17

This entry recorded pursuant to authorization and approval of the Company's board of directors as stated in minutes of meeting of said board held January 8, 1942.

Certified Correct:

/s/ CLAUSE R. GROTH

Approved:

/s/ J. G. HAWKINS

Pacific Power & Light Company
 JOURNAL ENTRY VOUCHER No. 9476

December 17, 1942

	Debit	Credit
	\$	\$
Utility Plant in Service, E-100.1	19,470,707.22	
Utility Plant in Service, W 100.1	129,191.35	
Utility Plant Leased to Others, E 100.2	1,943,804.02	
Construction Work in Progress, 100.3		
Utility Plant Acquisition Ad- justments, E 100.5	6,863,573.07	
Utility Plant Acquisition Ad- justments, W 100.5.....	7,888.76	
Utility Plant in Service, S 100.1	71,543.29	
Other Physical Property, 110....	2,468,068.52	
Investments in Associated Com- panies, 111		

Unamortized Debt Discount and Expense, 140	
Capital Stock Expense, 151.....	36,009.72
Discount on Capital Stock, 150	186,500.00
Retirement (Depreciation) Re- serve, 250	295,134.59
to	
Utility Plant in Process of Reclassification, 100.6	31,472,420.54

To record on books of account the reclassification of utility plant accounts as proposed by the Company in its revised reclassification and original cost studies, pursuant to Instruction 2-D, Utility Plant Accounts, of System of Accounts of Public Utilities Commissioner of Oregon (and Instruction 2-D, Electric Plant Accounts, of Federal Power Commission), and pursuant to Federal Power Commission Opinion No. 84 and Order dated November 24, 1942. (Docket No. IT-5611)

Certified Correct:

/s/ CLAUSE R. GROTH

Approved:

/s/ J. G. HAWKINS

Pacific Power & Light Company

JOURNAL ENTRY VOUCHER No. 9477

December 17, 1942

	Debit	Credit
	\$	\$
Miscellaneous Debits to Surplus,		
414	524,301.40	
To		
Retirement (Depreciation)		
Reserve, 250		524,301.40

To transfer from above credit account an amount representing the loss, in excess of the applicable reserve for retirements, from the sale or other disposition of non-electric properties of the Company prior to 1936, as identified in the record of the matter of the Company's reclassification and original cost studies in FPC case, Docket No. IT-5611.

This adjustment prescribed by FPC Opinion No. 84 and Order dated November 24, 1942. Paragraph (K) of said Order.

Certified Correct:

/s/ CLAUSE R. GROTH

Approved:

/s/ J. G. HAWKINS

Federal Power Commission, Dec. 28, 1942. Received.

Federal Power Commission. Docketed Dec. 28, 1942. C. J.

Pacific Power & Light Company

RECONCILIATION OF FPC OPINION No. 84 AND ORDER DATED NOVEMBER 24, 1942, WITH ENTRIES MADE PURSUANT THERETO ON COMPANY'S BOOKS

	Reclassification Proposed by Co. 10-20-42	Adjustment by Stipulation Op.No.84-pp.16-18	Date	Reference	Prior Adjustments		Title	December 1942 Adjustments, J.E.		
					Amount	No.		Amount	No.	Title
Utility Plant in Service, E 100-1.....	19,470,707.22							19,470,707.22	E 100-1	Utility Plant in Service
Utility Plant Leased to Others, E 100-2.....	1,943,804.02							1,943,804.02	E 100-2	Utility Plant Leased to Others
Construction Work in Progress, 100-3.....	87,828.95		12-31-37	JE 427	87,828.95					
Utility Plant Acquisition Adjustments, 100-5.....	6,863,573.07							6,863,573.07	100-5	Utility Plant Acquisition Adjust.
Utility Plant Adjustments, 107.....	42,746.43		12-31-41	JE 7726	42,746.43	414,	Miscellaneous Debits to Surplus			
Other Utility Plant, 108 (1).....	208,701.10									
Other Physical Property, 110.....	2,468,068.52							2,468,068.52	110	Other Physical Property
Investments in Affiliated Interests, 111.....	232,002.22		5-29-42	JE 8483A	232,002.22		Obligation to cancel Capital Stock of Inland Power & Light Company in merger			
Unamortized Debt Discount and Expense, 140.....	2,030,727.64		12-31-41	JE 7727	2,030,727.64	140,	Unamortized Debt Discount and Expense			
Capital Stock Expense, 151.....	36,009.72							36,009.72	151	Capital Stock Expense
Retirement Reserve, 250.....	382,846.97	63,406.58						295,134.59	250	Retirement (Depreciation) Reserve
		24,305.80								
0										
Discount on Capital Stock, 151.....	186,500.00							186,500.00	151	Discount on Capital Stock
Total Utility Plant in Process of Reclassification, 100-6 as of January 1, 1937.....	\$33,953,515.86									
(1) PUC of Oregon System of Accounts includes no Account 108, Other Utility Plant, so above amount under that caption is distributed as follows										
Utility Plant in Service, W 100-1.....								129,191.35	W 100-1	Utility Plant in Service, Water
Utility Plant in Service, S 100-1.....								71,543.29	S 100-1	Utility Plant in Service, Steam
Construction Work In Progress, 100-3.....			12-31-37	JE 427	77.70					
Utility Plant Acquisition Adjustments, W 100-5								7,888.76	W 100-5	Utility Plant Acquisition Adjustments, Water
Totals.....	\$33,953,515.86	\$ 87,712.38			\$2,393,382.94			\$31,472,420.54		

Prepared December 17, 1942

In the
United States Circuit Court of Appeals
For the Ninth Circuit

PACIFIC POWER & LIGHT COMPANY,

and

AMERICAN POWER & LIGHT COMPANY,
Petitioners,

vs.

FEDERAL POWER COMMISSION,
Respondent.

PETITION FOR REVIEW OF ORDER OF
FEDERAL POWER COMMISSION

To the Honorable, The United States Circuit Court
of Appeals for the Ninth Circuit, and to the
Judges Thereof:

Pacific Power & Light Company (hereinafter referred to as "Pacific") and American Power & Light Company (hereinafter referred to as "American"), the Petitioners herein, being aggrieved by the Order of the Federal Power Commission (hereinafter referred to as the "Commission"), dated November 24, 1942, in the proceeding bearing said Commission's Docket No. IT-5611, and by the denial by said Commission of Petitioners' applications for rehearing filed in said proceeding on December 31, 1942, which applications were denied by said Commission by order entered January 13, 1943, but not

served until January 17, 1943, hereby respectfully petition and show:

I.

Pacific is a corporation organized under the laws of the state of Maine, and is doing business as a public utility or public service company in the states of Oregon and Washington, under and by virtue of compliance with the laws of said states, respectively, and has been so engaged in such business in said states since the month of July, 1910. The property of Pacific comprises both electric and non-electric facilities, and its electric facilities include certain transmission lines extending across the boundary line between said states of Oregon and Washington. As the owner of such transmission facilities, Pacific is a "public utility" as defined in Section 201 of the Federal Power Act, and is subject to the jurisdiction of the Commission to the extent specified by the provisions of said Act. Pacific is subject to comprehensive regulation by the states of Oregon and Washington, respectively, as to accounting, rates adequacy of service, contracts with affiliated interests, and every other aspect of its business which concerns the general public.

II.

American is a corporation organized under the laws of the state of Maine, having an executive office at Two Rector Street, New York, New York. American is a public utility holding company registered as such under the Public Utility Holding Company Act of 1935, and owns 1,000,000 shares of

the no-par-value common stock of Pacific, having a stated value on the books of Pacific of \$7.00 per share, being all of said common stock issued and outstanding.

American acquired said common stock of Pacific as the result of certain transactions between American and Pacific in the years 1910, 1915, and 1930 respectively, whereby American caused to be transferred to Pacific certain properties, securities, and cash, receiving in exchange therefor securities issued by Pacific, including certain bonds and certain shares of preferred stock of Pacific which were sold by American to the public, as contemplated at the time of the transactions, and including various issues of common stock which were converted into said 1,000,000 shares of common stock as a part of the 1930 transaction.

III.

The Commission is the administrative body entrusted with the administration of the Federal Power Act, 16 U. S. C. A. §§791 et seq., hereinafter sometimes referred to as the "Act". The Commission is authorized by the terms of the Act to investigate and ascertain the actual legitimate cost of the property of public utilities and the fair value of such property, to require that every public utility file a statement of the original cost of its property, to determine the fair value of projects already constructed for which license is sought, and to prescribe a uniform system of accounts to be kept by licensees and public utilities. The Commis-

sion is authorized by the terms of the Act to make determinations with respect to certain rates, security issues, the acquisition or disposition of property, and certain other matters, all such regulatory authority being subject, however, to the restrictions and limitations set forth in the Act.

IV.

The Commission, by its order Number 42 adopted June 16, 1936, as amended, prescribed its "Uniform System of Accounts" for public utilities and licensees. Said System of Accounts, as supplemented by the Commission's order of May 11, 1937, directed (by Electric Plant Accounts Instruction 2-D) all public utilities, including Pacific, to reclassify their electric plant accounts, and to submit to the Commission certain statements showing pro forma a reclassification of their electric plant accounts in accordance with the provisions of said System of Accounts.

V.

Said System of Accounts, so adopted by the Commission on June 16, 1936, and the reclassification of accounts so directed by said Instruction 2-D and by the Commission's said order of May 11, 1937, were and are based exclusively upon the so-called "original cost" of each unit of utility property, such "original cost" being defined in said System of Accounts as "the cost of such property to the person first devoting it to public service." Pacific's accounts at all times have accurately recorded such "original cost" of all property constructed or first

applied by it to public service; but a large part of Pacific's electric utility property was not constructed or first so applied by it, and had been purchased by Pacific, along with other properties, as assembled local operating enterprises, from prior owners thereof (there were 145 such prior owners); and, in the majority of cases, the books and records of such prior owners with respect to such property were either not available to Pacific, or, if available in whole or in part, were not adequate or acceptable records of such original cost. Further serious difficulties confronted Pacific in attempting to determine such original cost, and to reclassify Pacific's property on the basis thereof, because of the retirement or replacement of many thousands of items of such purchased property, during the approximately thirty years of Pacific's operations prior to the making of such reclassification, and because identification of such retired or replaced items (as between purchased and constructed units) was impracticable, if not wholly impossible.

VI.

After certain preliminary proceedings before the Commission, followed by the filing by Pacific on July 3, 1940, of a tentative reclassification of its electric plant accounts in response to said order of May 11, 1937, and later by the filing with the Commission of a so-called "joint report" by the staffs of the Commission and the Public Utilities Commissioner of Oregon, pertaining to the tentative reclassification so filed by Pacific, the Commission

entered an order on July 1, 1941, requiring Pacific, among other things, to show cause why Pacific should not make the accounting adjustments proposed in such joint report, and further requiring Pacific to submit appropriate plans for the "disposition" of such amounts as might be established in so-called "Account 100.5, Electric Plant Acquisition Adjustments", and so-called "Account 107, Electric Plant Adjustments".

VII.

On September 26, 1941, Pacific completed and delivered to the Commission copies of Pacific's then proposed revised reclassification of its electric plant accounts, and of its further and revised original cost studies upon which said proposed revised reclassification was based; and such revised reclassification and original cost studies (Exhibit 17 in said proceeding No. IT-5611), together with said joint report of the staffs of the Commission and the Oregon Commissioner, were presented at a hearing in said proceeding held by the Commission at Portland, Oregon, from September 29, 1941, to October 8, 1941. Prior to said hearing, permission to intervene in said proceeding was granted by the Commission to American, one of the Petitioners herein.

VIII.

On December 3, 1942, the Commission issued its Opinion No. 84, and its Order based on such opinion, said Opinion and said Order being dated November 24, 1942, and said Order prescribing, among

other things not pertinent to this review, as follows:

“The Commission orders that:

Pacific Power & Light Company (hereinafter referred to as “Pacific”) record in its accounts the reclassification and adjusting entries proposed in its revised reclassification and original cost studies; and

The Commission further orders that:

(A) Pacific remove from Account 100.5, Electric Plant Acquisition Adjustments, and transfer to Account 107, Electric Plant Adjustments, the amount of \$4,121,981.41;

(B) Pacific dispose of the amount of \$4,121,981.41 established in Account 107, Electric Plant Adjustments, under Paragraph (A) above, by charging \$1,135,113.91 of that amount to the special reserve created pursuant to the Commission’s Opinion No. 69; and by charging the balance of \$2,986,867.50 to Account 271, Earned Surplus; provided, however, that Pacific may charge all or any part of said \$2,986,867.50 against a Capital Surplus properly created for that purpose.

* * * * *

(H) Pacific dispose of the amount of \$2,741,591.66 classified in Account 100.5, Electric Plant Acquisition Adjustments, by charging said amount to Account 537, Miscellaneous Amortization, in ten equal annual charges, commencing with the calendar year 1942;

* * * * *

(O) Pacific file with the Commission on or before December 31, 1942, certified copies of the en-

tries required by Paragraphs (A) to (N), inclusive, of this order; and on or before March 15 of each year thereafter the entries required by Paragraph (H) of this order until the entire amount in Account 100.5 has been disposed of;”

All other accounting entries prescribed by said Order of November 24, 1942, were adopted and recorded by Pacific in its accounts, either prior to the entry of said Order, or as of the closing of Pacific's books for the month of December, 1942.

IX.

Pacific and American, each being aggrieved by said Order of November 24, 1942, filed with the Commission on December 31, 1942, pursuant to the provisions of Section 313(a) of the Act, their separate applications for rehearing as to the requirements of said Paragraphs (A), (B), and (H) of said Order, and of said Paragraph (O) in relation to said Paragraphs (A), (B), and (H). The Commission, by order entered in said proceeding on January 13, 1943, but not served until January 17, 1943, denied said applications for rehearing. By a prior order entered in said proceeding on December 31, 1942, upon application of Pacific filed on December 26, 1942, the Commission ordered that

“The time within which Pacific Power & Light Company shall file certified copies of the entries required by Paragraphs (A), (B), and (H) of the Commission's order of November 24, 1942, be and it hereby is extended to March 15, 1943.”

X.

The business, operations, and property of Pacific involved in said proceeding are located wholly within the states of Washington and Oregon, and Pacific's office and principal place of business for the conduct of said business is located in the City of Portland, State of Oregon, and within the Ninth Judicial Circuit.

XI.

Petitioners respectfully aver that said Paragraphs (A), (B), and (H) of said Order of the Commission, dated November 24, 1942 (hereinafter sometimes referred to as the "Order"), and said Paragraph (O) of said Order in so far as it applies to said Paragraphs (A), (B), and (H), are unreasonable, arbitrary, and contrary to law or without authority in law, and that the Commission erred in so ordering, as more fully hereinafter appears, namely:

(1) The Commission erred, as to said Paragraph (A), in not classifying in Account 100.5 Electric Plant Acquisition Adjustments, the amount of \$4,121,981.41 referred to in said Paragraph (A), since Pacific paid or incurred said amount of acquisition cost by the issuance of its securities for properties and rights adjudged by Pacific to have a value equivalent to the amount of such securities so issued, and at a time when the exercise of such judgment was, and thereafter became, controlling as to the cost of the property so acquired and as to the validity of the securities issued in exchange therefor, as fully-paid and non-assessable securities; and, by definition of Account 100.5, such

acquisition cost so incurred is required to be classified in said Account 100.5.

(2) The Commission erred, as to said Paragraph (A), in so ordering the reclassification of said \$4,121,981.41 in Account 107, instead of in Account 100.5 with other Electric Plant Acquisition Adjustments, by ignoring and by failing to take into account the great potential values in excess of cost to American, which were inherent in the properties and enterprises turned over by American to Pacific in 1910, as envisaged by the organizers of Pacific at that time, and the existence of which values has been fully demonstrated by the record of Pacific's growth and of its performance in the interests of consumers and the public from 1910 to date.

(3) The Commission erred, as to said Paragraph (A), in failing to recognize that American was under no obligation in 1910, when all of said \$4,121,981.41 of acquisition cost was incurred, to part with or to transfer the properties and rights involved in its transactions with Pacific for a consideration aggregating less than American's appraisal of the fair value of such properties and rights, irrespective of their actual cost to American, but was under a positive obligation to obtain the full value thereof in accordance with such appraisal, since the transfer contemplated that persons other than security holders of American would acquire an interest in Pacific; and the Commission's characterization of such acquisition cost as a "write-up" affords no lawful basis for differen-

tiating such cost from other acquisition costs which are required by the Commission's Uniform System of Accounts to be classified in Account 100.5, Electric Plant Acquisition Adjustments.

(4) The Commission erred, as to said Paragraph (A), while purporting to base its ordered reclassification in Account 107 of said \$4,121,981.41 of acquisition cost on the costs incurred by American, in disregarding and in failing to recognize the approximately \$4,000,000 of costs incurred by American upon the proposed Priest Rapids power development in furtherance and for the benefit of the properties and the enterprise transferred by it to Pacific in 1910.

(5) The Commission erred, as to said Paragraph (B), in ordering Pacific to "dispose of" said amount of \$4,121,981.41 of acquisition cost, whether reclassified in Account 100.5 as Petitioners maintain should be done, or in Account 107 as ordered by the Commission, for the reason that the Commission has no authority under the Act, or under the Constitution of the United States, to require the elimination from the asset side of the balance sheet of a public utility of any sum fully supported by the present fair value of its assets, although in excess of the Commission's determination of "original" or other cost.

(6) The Commission erred, as to said Paragraph (B), in assuming that its authority under the Act extends retroactively to the elimination from the accounts of a public utility of asset items lawfully established in the accounts of such public

utility long prior to the time when the Commission was granted any authority with respect to the accounts of such utility.

(7) The Commission erred, as to said Paragraph (B), in ignoring, and in refusing to permit the introduction of, competent, relevant, and properly proffered evidence on the issue of disposition, which fully establishes that the fair value of Pacific's assets is equal to or in excess of the recorded book value thereof.

(8) The Commission erred, as to said Paragraph (B), and violated the vested property and constitutional rights of Pacific and its stockholders, preferred and common, by directing in effect the elimination in whole or in part of Pacific's Earned Surplus created from lawfully earned income, the effect of which elimination would be to prevent the declaration or payment of dividends lawfully earned upon the capital stock of Pacific, and without regard or consideration for the value of Pacific's assets at the time of such elimination.

(9) The Commission erred in suggesting and implying by said Paragraph (B) that Pacific has a practicable means of creating a Capital Surplus against which all or any part of said \$4,121,981.41 may be charged, and that Pacific may thereby avoid the unconstitutional, confiscatory and destructive effect upon Pacific and its stockholders of the charge to Earned Surplus ordered by the Commission by its said Paragraph (B).

(10) The Commission erred, as to said Paragraph (H), for the reasons hereinabove set forth

under paragraphs (5), (6), (7), and (8) of this Article XI.

(11) The Commission erred, as to said Paragraph (H), because the \$2,741,591.66 of the amount in Pacific's Account 100.5, ordered by the Commission to be disposed of by amortization in ten equal annual charges to or deductions from income, represents admitted actual cost of and investment in Pacific's present assets, whether or not such assets be characterized as "intangible" assets; and as such, said \$2,741,591.66 of admitted actual cost and investment may not lawfully be required to be "written off" or disposed of, so long as the assets purchased at such cost remain the property of Pacific.

(12) The Commission erred, as to said Paragraph (H), because to require such amortization of said \$2,741,591.66 of admitted actual cost and investment in Pacific's assets, would unlawfully and unconstitutionally deprive Pacific of the right to declare and pay, and its stockholders, preferred and common, of the right to receive, dividends lawfully earned upon Pacific's preferred and common stocks, to the extent that such amortization at the rate of \$274,159.17 per year for ten years, beginning with the year 1942, will necessarily divert such lawful earnings to such other arbitrarily and unlawfully prescribed purpose.

(13) The Commission erred, as to said Paragraphs (A), (B), and (H), because the Commission, in issuing such orders, has exceeded the scope of its regulatory authority over Pacific under the

Act, has contravened the Fifth and Tenth Amendments of the Constitution, and Sections 1 and 2 of Article III of the Constitution, and has infringed upon the regulatory authority reserved to the States by said Act and the Tenth Amendment to the Constitution.

(14) The Commission erred, as to said Paragraphs (A), (B), and (H), by requiring Pacific to record its assets on its books at less than their present fair value, and because, to the extent that the Commission makes use of such revised books of account as a basis for regulating rates and dividends and for purposes of condemnation, it will exceed, and it threatens to exceed, the powers granted to it under the Act, and will violate the Fifth and Tenth Amendments to the Constitution, and Sections 1 and 2 of Article III of the Constitution.

(15) The Commission erred, as to said Paragraphs (A), (B), and (H), in failing to find (a) that the costs of the various businesses, properties and values inherent in the acquisition transactions between Pacific and American aggregate the amounts recorded on account thereof on the books of Pacific; (b) in failing to find that the amounts so recorded are fully covered and represented by assets having a value in excess of such amounts; and (c) in failing to find that the entire difference between so-called original cost and the cost recorded on the books of Pacific should be placed in Account 100.5; and the Commission further erred in ordering the classification of a portion of such

difference in Account 107, as required by Paragraph (A) of said Order, and in ordering the disposition of any part of said difference, as required by Paragraphs (B) and (H) of said Order, because such failures to find and such orders are arbitrary and capricious, violate the Fifth and Tenth Amendments to the Constitution, constitute the taking of property for a public purpose without payment of just compensation, are contrary to the provisions of Sections 1 and 2 of Article III of the Constitution, and violate the constitutional guarantees of due process and of the judicial determination of fundamental questions of fact and law.

XII.

As set forth in Article IX hereof, the Commission by order entered December 31, 1942, has extended the time within which Pacific shall be required to make, and to file certified copies of, the entries required by said Paragraphs (A), (B), and (H) to March 15, 1943; and Petitioners respectfully submit that Pacific should not be required, during the pendency of the appeal effected by this petition for review, to make the accounting adjustments required by said Paragraphs (A), (B), and (H) of said Order or to file copies of the journal entries provided for in said Paragraphs, or otherwise to disturb the status quo of Pacific's accounts. In this connection, Petitioners submit that if Pacific should be compelled to comply with said requirements of the Commission's said Order pending the outcome of this review, the questions raised in this petition

for review may become moot, thus denying Petitioners the right of judicial review provided for in Section 313 of the Act. Furthermore, such adjustments or journal entries may not be considered to be definitive for any purpose, nor may any determination or order of the Commission be based thereon, prior to this Court's determination of the issues herein, without denying to Petitioners the right of judicial review provided for in said Section 313 of the Act. On the other hand, if Pacific should fail or refuse to comply with said provisions of the Commission's said Order, both Pacific and its officers may become subject to the fines, penalties and forfeitures prescribed by Sections 315 and 316 of the Act.

Neither the public interest nor the interests of investors or consumers could conceivably be adversely affected by a stay of the Commission's requirements in this respect, because, if said Paragraphs of the Commission's said Order should be sustained by this Court, Pacific can and will be required to make, nunc pro tunc, said accounting adjustments and journal entries, and to file certified copies of said journal entries, as the Commission has required. If such accounting adjustments and journal entries could be made on March 15, 1943, as of December 31, 1942, they obviously may be made with equal propriety, if required to be made at all, after the determination of the issues raised in this petition for review.

Wherefore, Petitioners pray that said Paragraphs (A), (B), and (H) of said Order of the Federal Power Commission, dated November 24, 1942, and

said Commission's denial of Petitioners' said applications for rehearing filed on December 31, 1942, be reviewed by this Honorable Court; that this Court grant forthwith a stay of said Paragraphs (A), (B), and (H) of the Commission's said Order, and of Paragraph (O) of said Order in so far as the latter applies to said Paragraphs (A), (B), and (H), pending the entry of the judgment or decree of this Court upon the issues presented by this petition for review; and, in the event that the provisions of said Paragraphs (A), (B), and (H) shall not have been wholly set aside by such judgment or decree, until ten (10) days after the issuance and service upon Petitioner, Pacific Power & Light Company, of certified copy of such judgment or decree; and that, after consideration of the issues presented by this petition for review, this Court enter its judgment or decree wholly setting aside or annulling said Paragraphs (A), (B), and (H) of said Order, and granting to Petitioners and each of them such other

and further relief as may be just and proper in the premises.

Respectfully submitted,

PACIFIC POWER & LIGHT
COMPANY,

By WILL T. NEILL

Vice-President

AMERICAN POWER & LIGHT
COMPANY,

By L. H. PARKHURST

Vice-President.

JOHN A. LAING,

HENRY S. GRAY,

Public Service Building,

Portland, Oregon,

Attorneys for Petitioner,
Pacific Power & Light Com-
pany;

A. J. G. PRIEST,

Two Rector Street,

New York, New York,

ADRIAN L. FOLEY,

14 Wall Street,

New York, New York,

Attorneys for Petitioner,
American Power & Light
Company.

LAING GRAY & SMITH,

Portland, Oregon;

REID & PRIEST,

WHITE & CASE,

New York, New York,

Of Counsel.

State of Oregon,
County of Multnomah—ss.

I, Will T. Neill, being first duly sworn, depose and say that I am the Vice-President of Pacific Power & Light Company, one of the petitioners herein; that I have read the foregoing Petition and know the contents thereof, and that the same is true to the best of my knowledge and belief.

WILL T. NEILL

Subscribed and sworn to before me this 8th day of March, 1943.

[Seal]

JEAN M. GILCHRIST,

Notary Public for Oregon

My Commission Expires August 2, 1944.

State of New York,
County of New York—ss.

I, L. H. Parkhurst, being first duly sworn, depose and say that I am the Vice-President of American Power & Light Company, one of the Petitioners herein; that I have read the foregoing Petition and know the contents thereof, and that the same is true to the best of my knowledge and belief.

L. H. PARKHURST

[Seal]

JEAN M. GILCHRIST,

Subscribed and sworn to before me this 5th day of March, 1943.

[Seal]

ALICE M. POWELL,

Notary Public, Queens

County

Queens Co. Clk's No. 4173

Certificates filed in

N. Y. Co. Clk's No. 731, Reg. No. 3P441

Westchester County Clerk

Commission expires March 30, 1943

[Endorsed]: Filed Mar. 11, 1943. Paul P. O'Brien, Clerk.

At a stated term, to wit: The October Term 1942, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the eighteenth day of March in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding,

Honorable Bert Emory Haney, Circuit Judge,
Honorable William Healy, Circuit Judge.

[Title of Cause.]

ORDER STAYING PROCEEDINGS PENDING
DETERMINATION OF REVIEW

Upon motion of John A. Laing and Henry S. Gray, attorneys for Petitioner Pacific Power & Light Company, and of A. J. G. Priest and Adrian L. Foley, attorneys for Petitioner American Power & Light Company, and upon the Stipulation of said

attorneys for Petitioners and of Charles V. Shannon, General Counsel for the Respondent, it appearing to the Court that no prejudice can result to any party or to the public interest from granting of such motion as herein provided and good cause therefor appearing to the Court,

It Is Hereby Ordered that the requirements of Paragraphs (A), (B), and (H), and of Paragraph (O) as applied to Paragraphs (A), (B), and (H), of the Order of the Federal Power Commission, dated November 24, 1942, in that certain proceeding before said Commission entitled "In the Matter of Pacific Power & Light Company, Docket No. IT-5611", being the Order of said Commission for the review of which a Petition was filed in this Court on March 11, 1943, by said Pacific Power & Light Company and said American Power & Light Company,

Be and said parts of said Order hereby are stayed during the pendency of the cause commenced by the filing of said Petition for Review in this Court, and, in the event that said Paragraphs (A), (B), and (H) of said Order shall not have been wholly set aside by the judgment or decree of the Court upon such review, until 10 days after the issuance and service upon Pacific Power & Light Company of certified copy of such judgment or decree;

Provided, however, that, during the period of the stay granted hereby, said Pacific Power & Light Company shall not declare or pay any dividends upon any shares of its common stock, or make any other distribution upon any shares of its common

stock, except such dividends or distributions as might lawfully be declared, paid or made after complying with the provisions of Paragraphs (B) and (H) of said Order of Said Commission, dated November 24, 1942.

[Title of Commission and Cause.]

TESTIMONY

Trial Examiner: I believe, under the circumstances that the Examiner has no alternative but to deny the motion filed by respondent to dismiss this proceeding. I am sure the Commission has in mind a desire to get the facts concerning this particular proceeding, and if there is merit in the motion of respondent it, of course, can be passed upon later by the Commission. However, the Examiner presently will deny the motion and ask respondents to proceed. Now, before respondent does proceed, I think the order of the Commission clearly sets forth the principal questions that arise in this proceeding. However, there are, of course, many facts, and perhaps some questions of law underlying those principal questions, which have a direct bearing on the decision of the questions, and the Examiner, therefore, is desirous of having counsel state their positions and contentions at this time, and I think perhaps at this time it might expedite the hearing if that were to be done at the [249*] outset.

Mr. Foley: If the Examiner please, the Amer-

ican Power & Light do desire to join in the motion made by Pacific Power & Light and, unfortunately, you ruled against the motion before we had the opportunity to make our motion to join in that motion, and on added grounds. Now, we have prepared a form of motion to dismiss on behalf of the American Power & Light, which we would like to have inserted in the record, as if it had been introduced before you denied the motion of Mr. Laing.

Trial Examiner: I take it we can act upon your motion separately?

Mr. Foley: You might do that, except I have framed it joining in with its motion, and perhaps the way to state it would be, the American Power & Light adopt the motion to dismiss made on behalf of Pacific Power & Light, and for all the reasons therein stated, and on the additional ground—I think I will have to read this.

Trial Examiner: Very well.

Mr. Foley: “on the additional ground that, as a stockholder and creditor of Pacific Power & Light Company, the Intervenor’s property and property rights vested prior to the passage of the Federal Power Act, and all its other property and property rights, represented by such securities and debts, will be unlawfully prejudiced, jeopardized, and taken over for a public use without payment of just compensation and without [250] a judicial determination, by any order of this Commission requiring Pacific Power & Light Company to reclassify its accounts as proposed in the Commission’s orders dated respectively April 16, 1940 and

July 1, 1941, and in the joint report of the staffs of The Federal Power Commission and the Public Utilities Commissioner of Oregon, or by requiring Pacific Power & Light Company to dispose of any amounts recorded on its general corporate or other fundamental accounts and records fully covered or supported by present fair values, in violation of the jurisdiction and power granted to the Commission by the Federal Power Act, and in violation of the provisions of Articles V and X of the Amendments to the Constitution of the United States and in violation of the constitutional guarantees of due process of law, judicial procedure and determination of such questions and of freedom from arbitrary, unreasonable, or capricious actions or determinations by the government or any of its branches or departments or any of its agencies.”

Trial Examiner: Very well. I think, perhaps, the position that the Examiner has taken with regard to the motion filed by respondents would govern the disposition of your motion, Mr. Foley, and the reasons assigned are also the reasons for denying the motion that has just been filed by [251] the intervener, the American Power & Light Company. The motion will be denied.

Mr. Laing: Mr. Examiner, I assume that the ruling made against the Pacific Power & Light Company, and the intervener, as a matter of course, automatically carries an exception with it.

Trial Examiner: That is right. It may be understood that any ruling of the Examiner ad-

verse to counsel, that an exception is automatically granted. [252]

Trial Examiner: Do you have anything further, Mr. Slaff, at this time?

Mr. Slaff: I don't think there is much that need be added, Mr. Examiner. I have just received this answer, and I have flipped through it while Mr. Laing was making his comments with respect to it, and I think, perhaps, making due allowance for the usual self-serving statement contained in it, it probably reasonably fairly sets forth what is now at issue in this hearing, as I understand it by the filing of the revised reclassification, which is going to be put in evidence and going to be explained by a witness of the Company. The issue has pretty well narrowed down to a determination as to what accounts properly belong in 100.5 and what amount properly belongs in Account 107, and what disposition is to be made of the amounts which are ultimately properly established in those accounts. There may be some periphery, some minor issues involved; but, as I understand it, that is what the ultimate problem is that will be involved in this proceeding. [256]

Mr. Laing: I should like to add to what Mr. Slaff said, and I am glad that he made the comment; and that is that I agree with him that the issues in so far as they have to do with matters involved in the Examiner's report have been very definitely crystalized and simplified as to the present state of the record or, rather, as the record will appear when the revised statements are offered in

evidence; and I want to say in all earnestness and good faith that for the past two or three weeks, it has been our very definite aim to establish that result and to file with the Commission and make available to the Examiners of the two staffs, a report that would crystalize the problem and indicate the points of acceptance and differences as clearly and sharply as could be done, so as to save a great deal of fooling around or wasting time trying to get down to grips with the problem; that has been our objective in the work that we have done in preparation for this hearing. [257]

WILL T. NEILL

called as a witness on behalf of the Pacific Power & Light Company, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Laing:

Q. You are the Vice-President of the Pacific Power & Light Company? A. I am.

Q. And you testified at the earlier hearing of this proceeding in Washington, D. C., May 23, 1940? A. I did.

Q. At that time you stated your qualifications, experience, and training, and your connection with the Pacific Power & Light Company in this particular work, did you not? A. I did. [259]

Q. Now, if you will refer to the order of July 1, 1941. Have you got it before you?

(Testimony of Will T. Neill.)

A. Yes.

Q. That order contains a recital, as subparagraph (c), [260] to the following effect: The Company, since adjournment of the hearing referred to in paragraph (b) hereof, filed on July 3, 1940, its proposed reclassification and original cost studies required by Electric Plant Instruction 2-D of the Commission's Uniform System of Accounts and the Commission's order of May 11, 1937. Are you familiar with the material that was filed by the Company as set forth in that paragraph of the Commission's order? A. Yes, I am.

Q. When was that material forwarded?

A. That material was forwarded to the Federal Power Commission on July 1, 1940. [261]

Q. Mr. Neill, I now hand you a printed volume, which is entitled, "Pacific Power & Light Company Reclassification of Electric Plant, Statements A to I, inclusive." I will ask you if that is the volume that was referred to in the letter of July 1, 1940, the receipt of which is referred to in the Commission's order of July 1, 1941?

A. That is correct. I see some pencil marks in this, [263] however.

Q. You say that is the volume?

A. That is the volume.

Mr. Laing: I would like to offer it for identification as an exhibit.

Trial Examiner: It will be marked for identification as Exhibit 15.

(Testimony of Will T. Neill.)

(The document referred to was marked Exhibit No. 15 for identification.)

Mr. Goldberg: I think it would probably be desirable at this time to offer for identification the staff report, "Pacific Power & Light Company, Portland, Oregon, Report on the Reclassification and Original Cost Studies of Electric Plant as of January 1, 1937," as Exhibit 16 for identification.

Trial Examiner: It will be so marked.

(The document referred to was marked Exhibit No. 16 for identification.)

Mr. Laing: That is the document referred to in the Commission's order of July 1, 1941, in subdivision (d) of the recital?

Mr. Goldberg: Yes.

By Mr. Laing:

Q. Mr. Neill, can you advise us whether copies of this report, which has been marked as Exhibit 15 for identification, were sent out, at or about the same time, for [264] filing with the Public Utilities Commissioner of Oregon and with the Washington Department of Public Service?

A. Yes. We sent copies of the report to the Public Utilities Commissioner of Oregon on the 2nd day of July, 1940; and to the Department of Public Service of Washington on the 16th day of July, 1940.

Q. And they were sent to those two regulatory authorities, respectively, because of the fact that the Pacific Power & Light Company operates, as a

(Testimony of Will T. Neill.)

public utility, in each of those states and is subject to the jurisdiction of those respective regulatory bodies; is that correct?

A. That is correct.

Q. And with respect to the Oregon Public Utilities Commissioner, at least, there was pending at that time a more or less parallel proceeding to determine pretty much the same reclassification problems that were involved in the proceeding before the Federal Power Commission?

A. That is correct.

Q. And is that true to the same or a lesser extent with respect to the Department of Public Service of Washington?

A. That is true to substantially the same extent, the only difference being in the State of Washington the utility had one extra year in which to prepare its classification statement. [265]

Q. Now, will you take up Exhibit 15, and tell us, in general terms, what information and data the company submitted in response to this order of May 11, 1937.

A. This Exhibit No. 15, which was the volume of state- [266] ments A to I, inclusive, which the company submitted, contains those statements, as follows: Statement A in this volume is a rather complete narrative of the history of the origin and development of the company and its predecessors.

Q. That comprises the first 115 or 120 pages of the bound volume, does it not? That is, Statement A?

(Testimony of Will T. Neill.)

A. That is correct. The first 115 pages. Statement A is divided up into several chapters. Chapter I, which begins on page 3, and runs through page 23, is a general outline of the development of the Company; that is, the origin and the development of the Company. This chapter includes a description of the territory served. On page 4, or 5, there is a chart showing the communities supplied with electric service on January 1, 1937, of which there are approximately 150 on the chart. The chart shows, in pink color, the communities in which there were distribution systems originally acquired by the Pacific Company; the communities colored in blue indicate the communities in which the Pacific Company was the first agency to furnish electric service. One interesting thing about this chart is that the original acquisition which the Pacific Power & Light Company made in 1910 included property serving seventeen of the approximately 150 communities which it was serving at the end of 1936.

Following this chart of communities served, on page 6 is a map showing the general character of the territory served [267] by the Pacific Power & Light Company which, I think, will be interesting to those who are familiar with this territory. This is a relief map of the Columbia River area, and on this there have been superimposed, with red dots and stars, the principal communities which were served by the company's properties at the end of 1936. Rather, a better story of the nature of the

(Testimony of Will T. Neill.)

Company's territory and the areas which it serves and the manner in which they are served can be gotten from the maps; that is, in conjunction with the map on page 6, by considering the maps on pages 7 and 8.

The map on page 7 is a service area map showing, with general boundaries, the territories in which the Company actually has electric service lines. I might say that this chart has a lot of vacancies in between the service areas, but to one who knows the country, those spaces which are not now served by the Company, that is, within the general boundaries of its system, are spaces which are uncultivated lands, timber lands, or wide expanses of wheat lands, where the population is very scattered.

Q. They probably are what are commonly referred to in the West as the "wide open spaces"?

A. Yes, those are the wide open spaces. The service areas generally are confined, naturally, to the valley areas, the river bottom lands, and to the services within the boundaries of irrigated projects, that being where the population [268] is concentrated, most of it, in this territory. I might say, in connection with this map, while we are on it, the Company's system,—I think I had better make that explanation in connection with map 8,—that is, the map on page 8, rather.

On page 8 is a map which shows the general layout of the Company's transmission lines as of December, 1936. This map will show that the Com-

(Testimony of Will T. Neill.)

pany has four different power systems; three of these systems are of no great magnitude compared with the fourth, which is shown in the upper central part of the map, and which, in Company parlance, is referred to as the main power system. It shows that all the communities served, with the exception of those in those three isolated systems, are completely interconnected with the transmission lines, with interconnections between power plants and with sources of power from interconnections with other companies.

Q. While you are looking at that map, and enlarging somewhat on your explanation, the three systems that you refer to as isolated or independent systems of small magnitude, smaller magnitude than the main system, are located and referred to how, in the Company's records and correspondence?

A. Well, if you will note, at the mouth of the Columbia River, on the left-hand side of the map, there is a small system centering near the town of Astoria. That is ordinarily referred to as either the Clatsop County System or the Astoria-Seaside System. That is served by one steam plant, and now [269] has an additional supply, since this report was made, through interconnection with lines connecting with the Bonneville Power Administration.

Q. And it also has a connection for standby service received from one or more lumber companies?

(Testimony of Will T. Neill.)

A. Yes; in addition to our steam plant and the connection with the Government line, we have a firm connection with the Prouty Lumber Company.

Q. The general character of business and industry in the Clatsop County section is made up of what?

A. The territory in the Clatsop County area is made up principally of lumbering and fishing. Astoria is the center of the salmon fishing and canning industry on the Columbia River, and the entire area is very actively engaged in the lumbering business. This area, also, is a summer resort area, as the territory south of the town of Warrenton, shown on the map, down as far as Cannon Beach, is along the seashore, and it is a highly developed summer resort area.

Q. And it is somewhat of a winter resort area, also?

A. It is becoming more and more a winter resort, also.

Speaking of the four systems, I neglected to say, and if you will notice on this map, just east of the Astoria system there is another system of Pacific Power & Light property. This is a system of distribution properties which is owned by the Pacific Company, but leased for operation to the North-[270] western Electric Company.

Q. That territory embraces what counties? Generally speaking, the territory you just mentioned embraces Clark and Cowlitz counties in Washington and a part of Columbia County in Oregon?

(Testimony of Will T. Neill.)

A. A part of it is in Columbia County, Oregon; the majority of the properties in Washington are in Cowlitz and Clark counties,—principally, Clark County. There is also a small part of the system in Skamania County.

Q. Referring to your smaller systems, will you tell us where they are located, generally?

A. The so-called Deschutes system is a system shown in the lower central part of the map; that is central Oregon. It is entirely isolated; that is, it has no interconnection with any of the other systems on account of its distance away from the other power systems and the absence of population in the intervening areas. This system is supplied with power by the Company's hydroelectric plants at Bend and at Cline Falls; and also leases from the Inland Power & Light Company and operates a hydroelectric plant on the Crooked River; and also purchases power from two large lumber mills in Bend. That territory is largely devoted to the lumbering industry, augmented by some agricultural activity.

The other isolated system will be seen in the right-hand section of the map, about the center; that system is known as [271] our Enterprise system; that is a relatively small, isolated system in the Wallowa Valley, an isolated valley, surrounded by rugged mountain territory. The territory is devoted to stock raising, grain, some lumbering, and, also, if I can put in another plug for Oregon, it is the territory known as the "Alps of Oregon" or

(Testimony of Will T. Neill.)

"Alps of America." It is a very rugged territory, with very high mountains.

Q. The main power system, then, Mr. Neill, generally speaking, may be said to embrace the Yakima Valley and the Columbia River Valley, and the lower part of the Snake River Valley, as shown on the map; is that correct?

A. A part of the Snake; a little of the Snake. I think you might designate it as the Walla Walla River Valley rather than the Snake; I think that would be a better designation, although the service area is along certain tributaries of the Snake. The whole territory on the main power system from Yakima east to Pataha is devoted largely to agricultural and horticultural industry.

The eastern end of the system is almost entirely wheat raising. I wouldn't say almost entirely; the majority of the activity on the eastern end of the system is wheat raising.

The western section of the main power system in Washington is in the Yakima Valley, which is an irrigated valley, and is largely devoted to general agricultural and fruit raising industries. [272]

I might say, on the whole Pacific system, there is no great development of industries, except those which are connected with either lumbering, horticultural or agricultural pursuits. We have a few fairly large flour mills, a few fairly large lumber mills on our system, a good many canneries, a few fruit processing plants, fruit refrigerating plants, and industries of that kind.

(Testimony of Will T. Neill.)

Q. Is this system so located and so interconnected by its transmission lines to be in a position to utilize the power that may be generated at the Federal hydroelectric projects at Bonneville and Grand Coulee?

A. Yes; it is right in between them. [273]

Q. And by means of transmission line connections that the Company has in Washington extending up to Lind, Taunton, and Beverly, the Company is in position to, through other interconnections, be connected to the Grand Coulee source of supply, is it not?

A. That is correct. We are connected at Portland and Lind and also at Pataha, with the lines of the Washington Water Power Company, which cover the area of our main power system. The Washington Water Power Company furnished power for the construction of the Grand Coulee development, has high tension transmission lines in that neighborhood. I might say, while we are on this map, that the Pacific Company system is also interconnected down the Columbia River near Hood River, near the town of Underwood, as a matter of fact, with the high tension transmission system of the Northwestern Electric Company which, in turn, is interconnected with the Portland General Electric Company.

Q. Of course you have not undertaken to go through [274] this statement A in detail. You have at page 15 a map that shows the interconnection

(Testimony of Will T. Neill.)

with the main power systems in the Pacific Northwest, have you?

A. That is correct; that shows the interconnections which existed, I believe, December 31, 1936, at or about that date, and the Pacific Company systems on that map are shown in red.

Q. It appears from that map that the Pacific main power system is fitted right in between the main power sources around Portland and those around Spokane and interconnected also with the power supply systems in the Puget Sound area; is that correct?

A. Yes. That is completely interconnected with the privately owned systems which are on its borders.

Q. In the main, those privately owned systems have interconnections also with the publicly owned systems, have they not? A. Yes.

Q. Now, without taking up any more time with these maps, I would like for you to refer for a moment to—not in detail, but just indicate what has been shown, or attempted to be shown on the map on page 23 of that statement A.

A. Page 23 contains a corporate development diagram of the Pacific Power & Light Company. This is a diagram showing the corporate development of all of the properties [275] which have come into the Pacific Power & Light Company through acquisition.

Q. In other words, this indicates the names of the various individuals, partnerships, or corpora-

(Testimony of Will T. Neill.)

tions through whose ownership, or possession, the properties now operated by the Pacific Power & Light Company have gone from the beginning of time up until now? A. That is correct.

Q. Or up to December 31, 1936?

A. Yes, sir; up to as far as December 31, 1936. I might say this, in passing, that the oldest of the systems that are represented by these corporate developments are an electric system which was originally started in Astoria in Clatsop County, Oregon, in 1885. The rest spread along there—that is, the first beginnings of the electric service in the various parts of territory served by the Company.

Q. Now, referring generally, then, to this statement A, the first 115 pages of this Exhibit 15 here in this written story, other than as shown by the map and drawings and diagrams, traces the development of the Pacific Power & Light Company from its incorporation down to December 31, 1936?

A. That is correct.

Q. And the Company was incorporated when and under what circumstances?

A. It was incorporated under the laws of the State of [276] Maine on June 16, 1910.

Q. And qualified shortly thereafter, I assume, to transact business as a foreign corporation in Oregon and Washington, was it not?

A. I believe so, although I don't know the dates when it was done.

Q. Now, can you tell us what the purpose was in these various chapter headings on this? With-

(Testimony of Will T. Neill.)

out attempting to go into any detail about it, what was the purpose of the various chapters listed in statement A?

A. As I said, chapter 1 covers the general origin and development of the Company. Chapter 2 and the following chapters take up various major acquisitions. Chapter 2, starting on page 24, is also indicated in the index, covers the development of the Astoria Electric Company system, which was a part of the first acquisition made by the Company in 1910. Chapter number 3—let's go back to chapter number 2. That gives information, generally, of the same character as contained in chapter number 1, except it related only to the Astoria area, —Clatsop County area. Chapter number 3 gives similar information with respect to the acquisition of the Columbia Power & Light Company properties, which were also a part of a major acquisition by the Pacific Power & Light Company in 1910. That chapter also gives about the same information for those particular properties as is contained [277] generally for the entire company in chapter number 1. Chapter number 4 gives the same sort of information—charts, and maps for the properties of the Yakima-Pasco Power Company, which was identified as a major acquisition by the Pacific Power & Light Company in 1910.

Q. In other words, I understand with respect to these other companies, like Astoria Electric, Columbia Power & Light Company, Yakima-Pasco, what you did was to really go back to 1910 and dig

(Testimony of Will T. Neill.)

out the ancient history of the communities and their electric service and their properties up to the time they got to Pacific in 1910?

A. That is right. In addition, in all of these chapters in statement A, we have also put in various charts concerning the growth of our business, changes in our rates to show what happened within the Company's territory, since the acquisitions were made by the Pacific Company.

The first four chapters—that is, chapters 1, 2, 3 and 4, as I have said, cover a portion of the major acquisitions in 1910. Chapter 5 covers smaller acquisitions made from 1910 to 1929. Various types of property and the number of transactions which were made during that period are also shown. Chapter 6 takes the acquisition from 1930 on up to 1936.

Q. That is the beginning, I suppose, with the first of 1930; is that not correct? [278]

A. That is correct; and that period included one of the major acquisitions made by the Company, and in chapter 6 the same detailed sort of information is given for the territory covered by the properties included in that acquisition prior to the time the properties were acquired by the Pacific; also such information as was available as to the developments within that territory after Pacific acquired the property.

Q. Will you refer briefly to the other statements contained in that original volume? Tell us what they undertook to present.

(Testimony of Will T. Neill.)

A. Starting on page 116, going on through 119 is statement B which, in accordance with the Commission's order of May 11, 1937, was to contain a statement of acquisitions—electric operating units or statements by acquisitions showing the original cost thereof, the acquisition of adjustments in [279] connection therewith.

Starting on page 120 and ending on page 121, statement C, in which we were required to show the amounts included in our Plant Account, which had been arrived at by appraisals recorded prior to January 1, 1937, in lieu of cost to the Company.

Q. As to that, you show that there were none; is that correct?

A. There had been none. Page 122, title page and statement D, which runs through page 127, which shows in detail the plant accounts as recorded on the books of the Company as of December 31, 1936. That is as classified immediately prior to the reclassification in accordance with the new system of accounts. That statement shows the various plant accounts for the Company's water and other systems, as they were recorded on the Company's books on December 31, 1936. On pages 128 and 129, is statement E, which is a statement on which the Commission's order of May 11, 1937, required that the Company show the summary of adjustments necessary to state as of January 1, 1937, the accounts as prescribed in the Federal Power Commission's Uniform System of Accounts.

Q. I take it that that statement E is a sum-

(Testimony of Will T. Neill.)

mary of data and adjustments that will be reflected in some of the other statements; is it not?

A. That is correct. On pages 130, through 135, [280] statement F, which is a detailed statement of Accounts 100, electric plant as of January 1, 1937, and Account 107, electric plant adjustments, classified in accordance with the Uniform System of Accounts effective January 1, 1937. [281]

Q. That, again, is based on the cost data and other information which are reflected in some of the other statements, is it not, Mr. Neill, or is that the basis——

A. That is the basic statement from which the amounts in some of the other statements are drawn. On pages 136 and 137, appears Statement G, which is a comparative general balance sheet, or a comparative balance sheet, as of January 1, 1937, page 137 showing the balance sheet before and after making the adjusting entries shown in the other statements.

On pages 138 and 139 appears Statement H which, in the Commission's order of May 11, 1937, required the Company to show a suggested plan for disposition of amounts as of January 1, 1937, includable in account 100.5, Electric Plant Acquisition Adjustment, and Account 107, Electric Plant Adjustments.

The Witness: On pages 140 through 151, appears Statement I which, according to the Commission's order of May 11, 1937, was provided for showing various statistical information with respect

(Testimony of Will T. Neill.)

[282] to individual production power plants, transmission lines, and substations, and other equipment.

Q. Now, am I correct in assuming, Mr. Neill, that the Statements B, E, F, G, and H, to the extent that they speak of adjustments, represent adjustments which are suggested, or were suggested at the time, by the Company, as a result of the reclassification studies it had made, but do not represent changes that were actually made in the Company's plant account, either then or later?

A. That is correct.

Q. In other words, they were the entries which the Company, on the basis of the information it had at the time felt might properly be made to conform with the requirements of the Commission's classification of accounts; is that correct?

A. That is correct.

Q. Referring back to the Commission's order of July 1, 1941, subdivision C of the recitals, where the Commission refers to the Company's having filed its original cost studies; which statement in this Exhibit 15 really sets forth the results in detail of the Company's studies as to original cost and as to the adjustments necessary on account of the original cost determinations?

A. That is Statement F.

Q. I would like to present you this volume (counsel [283] handing a book to the witness). The document which I have just handed to you, Mr. Neill, bears what sort of identification on the cover page?

(Testimony of Will T. Neill.)

A. This is a document bearing the identification on the cover page which reads as follows:

“Pacific Power & Light Company, Reclassification of Electric Plant, prepared pursuant to Uniform System of Accounts—Electric Plants Accounts Instruction 2-D and to Order of May 11, 1937, of Federal Power Commission. Revised Statement B, Revised Statement E, Revised Statement F, Revised Statement G, Revised Statement H, Revised Statement I, With Introductory and Explanatory Statements. Federal Power Commission—Docket No. IT-5611.” Dated at Portland, Oregon, September 26, 1941.

Mr. Laing: I should like to have that document marked for identification, Mr. Examiner.

Trial Examiner: It will be marked for identification as Exhibit No. 17.

(The document referred to was marked Exhibit No. 17 for identification.)

By Mr. Laing:

Q. I have also just presented to you, Mr. Neill, what purports to be a copy of a letter on the letterhead of Pacific Power & Light Company, addressed by you, as Vice-President, to the Federal Power Commission, dated September 27, 1941, and I will ask you what that document is. [284]

A. That is a letter of transmittal with which we transmitted to the Commission on September 27th, by Air Mail, originals of the document that has been identified as Exhibit 17.

(Testimony of Will T. Neill.)

I would like to offer that copy of letter for identification, Mr. Examiner.

Trial Examiner: It will be marked for identification as Exhibit 18.

(The document referred to was marked Exhibit No. 18 for identification.)

By Mr. Laing:

Q. I wish you would refer for a moment to Exhibit No. 18, Mr. Neill, and I would like to call your attention to the second and third paragraphs of the letter. Will you read that at this time? Start with the second paragraph. Perhaps you may have to go back further than that; I don't know. Perhaps you had better begin at the beginning.

A. This letter is dated September 27, 1941, addressed to the Federal Power Commission, Washington, D. C. "Re: Reclassification of Electric Plant Account, FPC Docket No. IT-5611.

Dear Sirs:

"On July 3, 1940, Pacific Power & Light Company filed with the Commission a volume entitled 'Reclassification of Electric Plant—Statements A to I, inclusive', which had been [285] prepared by the Company pursuant to Electric Plant Instruction 2-D of the Commission's Uniform System of Accounts, and to the Commission's order pertaining thereto adopted May 11, 1937. The Company's letter to the Commission of July 1, 1940, transmitting this volume, stated among other things that

(Testimony of Will T. Neill.)

it might be 'necessary to make amendments to or revisions in such statements.'

"Since that date, the Company has been continuously engaged in making further studies and analyses of the problems involved, and has considered criticisms and suggestions contained in the Joint Report of the examiners for the Commission and the Public Utilities Commissioner of Oregon, served on the Company on July 7, 1941, and has had various consultations with the Commission's staff relating to these problems. It has also received and considered the various provisions of the 'Order Resuming Hearing and to Show Further Cause' entered by the Commission on July 1, 1941, in Docket IT-5611.

"The results of these further studies, analyses and consideration have been compiled in Revised Statements B, E, F, G, H, and I, respectively, with an 'Introductory and Explanatory Statement' in the form of a letter addressed to the Commission dated September 26, 1941, all of which have been assembled in a single volume with identifying cover page, these statements being verified by the affidavit of the undersigned dated September 26, 1941. Three signed counterparts of this [286] volume are transmitted herewith for filing with the Commission.

"The material assembled in this volume has been made available to the members of the Commission's staff now at Portland in preparation for the hearing on September 29, from time to time as the

(Testimony of Will T. Neill.)

various statements were compiled. One complete copy of the volume was delivered to the Commission's staff at Portland yesterday, September 26, and additional copies are being delivered to the staff today."

By Mr Laing:

Q. I am going to offer the entire letter in evidence, not at this time; but at this time I would like to ask you whether the document which has been marked as Exhibit No. 17 for identification is the document, or the volume that is referred to in this letter. A. It is.

Q. And can you tell me whether the material referred to in this letter of September 27th was actually air mailed on that date to the Federal Power Commission. A. It was.

Q. And do you know, Mr. Neill, whether copies of this same Exhibit No. 17 for identification were also mailed on that date to the Public Utilities Commissioner of Oregon at Salem, and to the Department of Public Service of Washington, at Olympia? A. They were. [287]

Q. On the same date?

A. On the same date.

Q. Now, referring to this Exhibit No. 17 for identification, will you turn to the verification page at the close of that Exhibit, No. 17, and read that, please, into the record?

A. The text of the verification reads as follows:
"Will T. Neill, being first duly sworn, on oath states that he is Vice President of Pacific Power

(Testimony of Will T. Neill.)

& Light Company; that the foregoing statements entitled Revised Statement B, Revised Statement E, Revised Statement F, Revised Statement G, Revised Statement H, and Revised Statement I, and the foregoing Introductory and Explanatory Statement in the form of a letter addressed to the Federal Power Commission, dated September 26, 1941, have been prepared by him or under his direct and personal supervision; that said Revised Statements have been prepared and are being submitted for the purpose of amending, superseding, and taking the places of Statements B, E, F, G, H, and I, respectively, relating to the same subject matter, filed by said Company with the Federal Power Commission and with the Public Utilities Commissioner of Oregon, on July 3, 1940, and with the Department of Public Service of Washington on or about July 17, 1940; that he has examined each of said Revised Statements and said Introductory and Explanatory Statement and is familiar with the contents thereof; and that to the best of his knowledge and belief the information contained in said Revised Statements and in said Introductory and Explanatory Statement, is true and correct and, subject to the limitations of records and data available to said Company for the preparation of such Statements, has been prepared in accordance with the provisions of the Uniform System of Accounts prescribed by the Federal Power Commission for public utilities and licensees, and of the order relat-

ing thereto adopted by said Commission on May 11, 1937, and in response to certain of the suggestions contained or implicit in the order of the Federal Power Commission in Docket No. IT-5611, dated July 1, 1941, relating to the subject matter treated or referred to in said Statements."

By Mr. Laing:

Q. That verification was made by yourself? You are the Will T. Neill referred to therein, are you not?

A. I am.

Q. Now, Mr. Neill, I wish you would turn to the second page of that exhibit No. 17 for identification, and read what the statement therein contains as to the work that was done by you and your company after July 1, 1940, or give us your own statement, as you see fit, as to what was done by the Company after the filing of the original statements on the 3rd of July, 1940.

A. That is covered by this page, and I should like to read it, if I may. [289]

I am reading from page 2 of the Introductory Statement.

"Since the filing of said Statements A to I, inclusive, the Company has been actively engaged in further studies of the problems presented by said Instruction 2-D and by said Order of May 11, 1937, for the purpose of verifying, and of correcting or supplementing where necessary or appropriate, the results of the original cost and other studies presented in said Statements A to I, inclusive. It has also obtained for and supplied to the staffs of the Federal Power Commission

(Testimony of Will T. Neill.)

and the Public Utilities Commissioner of Oregon such additional data, compilations, analyses, and supplementary or explanatory statements relating, directly or indirectly, to said Statements A to I inclusive, as have been requested from time to time over said period by the members of said staffs.

“In this work the Company has cooperated to the fullest possible extent with the representatives of the Federal Power Commission and the Oregon Commissioner in their joint examination of the Statements so submitted; and the Company has indicated to the staffs from time to time the Company’s readiness and intention to make corrections or revisions of said Statements wherever it appeared or might thereafter appear to the Company that corrections or changes were necessary or desirable. As a result of these further studies and of such consultations, the Company has found it necessary or appropriate to revise Statements B, E, F, G, H, and I as originally filed, [290] and to submit in lieu thereof the Revised Statements B, E, F, G, H, and I, respectively, hereto attached. Each of these Revised Statements is prefaced by an explanation of the revisions made, with such other comments as appear appropriate to a clear understanding of the facts presented, the methods pursued, and the Company’s position with respect thereto.”

Q. Now, as I understand from that statement of yours, and from this statement in the verification, the Company, as a result of the work which was done following the filing of the original State-

(Testimony of Will T. Neill.)

ments A to I, inclusive, found it necessary to change, or supersede certain of those statements originally filed; isn't that correct?

A. That is correct.

Q. In this verification in this statement you have just made, you have made no reference to the original statements A, C, and D, and those statements now stand as Statements A, C, and D; do those statements A, C, and D, stand as originally filed?

A. The Statement C and D stand as originally filed, there being no necessity for any revision in those two statements. Statement A, however, stands as originally filed, except as to certain changes which should be made on the maps included therein.

Q. That is, these maps showing the status of the system [291] as of various dates?

A. That is right. Those maps appear on pages 8, 16, 64, 85, 90, and 114, of Statement A, as originally filed.

Trial Examiner: That is Exhibit 15 as marked for identification?

Mr. Laing: Exhibit 15.

By Mr. Laing:

Q. What is the occasion for the necessity of making any revisions in those maps indicating the system at those times?

A. The reason for making the changes in the maps is that these maps, as originally included,—or, included in original Statement A, were de-

(Testimony of Will T. Neill.)

signed primarily to show service areas of the Company, and for that purpose they were satisfactory; but during the examination of the statements by the Commission's staff, it was disclosed that on these maps, which show the various lines of the Company, all of the lines shown in heavy black on these maps are labeled as transmission lines.

Now, that is not a correct classification of transmission lines with respect to the accounting for such lines under the Uniform System of Accounts. Some of these lines which are shown on these maps are actually major distribution feeders. So we thought it well to revise the maps so they would be in accord with the classification of property used in the original cost studies. [292]

Q. And you propose to offer revised maps showing those corrections, do you? A. Yes.

Q. Subject, then, to those necessary revisions, between transmission and distribution on the map, this Statement A and Statements C and D of this report that was filed July 3, 1940, represents your Company's return as it stands at the present time, in response to those particular phases of the inquiry, does it not? A. That is correct.

Mr. Laing: I think at this time I would like to offer Exhibit 15 in evidence, subject to the revisions that were made by Mr. Neill's verification in submission of the report of September 27th; namely, that the Statements B, E, F, G, H, and I

(Testimony of Will T. Neill.)

of the original filing are being superseded by these Revised Statements.

Mr. Slaff: No objection.

Trial Examiner: Exhibit 15 will be received.

(Exhibit No. 15 Was Received in Evidence.)

[293]

Q. Now, referring again, Mr. Neill, to your Exhibit No. 17 for identification, you discussed therein the task of determining the original cost as the Company has found it in this investigation, and I wish you would explain in some detail just how that job was tackled, and what the Company has undertaken to do about it.

A. I think the best method of doing that, probably, to save time, is to read page 3, and a small section at the top of page 4 of the Introductory Statement in Exhibit 17, that detail being headed by a title, "Original Cost Statement."

"The work and basis of preparing the statement of original cost reflected in Revised Statements B, E, F, G, H, and I hereto attached, and, except as modified by said Revised Statements, in the original Statements filed on July 3, 1940, have previously been described in the Company's Answer of May 18, 1940, to the Commission's Show Cause Order of April 16, 1940, in Docket No. IT-5611, and in the testimony presented at the hearing on said order. As stated in paragraph (3) of said Answer:

'Following the receipt of the Commission's or-

(Testimony of Will T. Neill.)

ders for the reclassification of electric plant, the Company made a study of the Uniform System of Accounts effective January [294] 1, 1937, and thereafter of the requirements of the Commission's order of May 11, 1937, and then began examination of available records for the purpose of reclassifying its electric plant in accordance with said Uniform System of Accounts, following which the Company began the studies which it then believed and considered to be proper for the determination of the original cost of its electric plant on the basis of recorded cost, to the extent that cost records were available and the estimated cost of the remainder of its property.

'Such determination involved in part the use of an Estimated Cost of Construction study which had been made by the Company for a portion of its property in connection with a rate and valuation proceeding previously pending before the Department of Public Service of the State of Washington. Such Estimated Cost of Construction study was based in part on starting figures obtained from early appraisals, and the straight addition thereto of net additions as shown by Company's fixed capital accounts subsequent to the date of such appraisals.

'It was subsequently determined by the Company and by accounting representatives of the Commission and of the Public Utilities Commissioner of Oregon that extensive revisions and adjustments were necessary in all of the studies which the

(Testimony of Will T. Neill.)

Company had prepared, both as to starting figures [295] and as to subsequent additions and retirements.

‘For the purpose of meeting such objections, the Company deemed it necessary to undertake the reclassification of its property upon the basis of determinations which did not involve the use of such old appraisals. An inventory of the electric property was prepared as of December 31, 1936. The Company has determined the cost of property from its records to the extent that the cost of such property could be identified in its records, and the use of estimates is being confined to those property items for which the actual original costs are not determinable from books and records’.”

[296]

Q. Referring to the matter that you have just read, when that work was completed it was embodied in the Statements A to I, inclusive, which was filed with the Commission on July 3, 1940?

A. Yes.

Q. That is the exhibit which has now become Exhibit 15?

A. Yes.

Q. And thereafter did the Company receive a document from the Commission, having to do with the statements A to I, inclusive, included therein?

A. We received such a document on July 7, 1941; that document has now been marked for identification as Exhibit 16, which is a joint report made by the staff of the Power Commission and of the Public Utilities Commissioner of Ore-

(Testimony of Will T. Neill.)

gon on the reclassification statements previously submitted by the Company.

Q. That document is now Exhibit 16 for identification? A. Yes.

Q. And it refers to the result of careful analyses and studies, I assume, made by the joint staffs of the Commissions somewhere between July 3, 1940 and the 1st of July, 1941? Is that correct?

A. I think that is approximately correct.

Q. Will you refer to that joint report, Exhibit 16, or to your reference to it in Exhibit 17, and tell us what the [297] Joint Report has, generally, to say about the nature of the study that was made to determine the original costs?

A. It is easier for me to refer to that in the document designated as Exhibit 17. I will refer to page 4 of the introductory statement, in which I make the following statement:

“With respect to this determination of original cost, the Joint Report of the staffs of the Commission and of the Oregon Commissioner, dated June 21, 1941, and served upon the Company on July 7, 1941, comments in part as follows:

‘The basis of the company’s reclassification studies submitted to the Commissions was a priced inventory as of December 31, 1936. In the pricing of this inventory, the company relied to a great extent upon the costs developed in the ‘Estimated Cost of Construction’ schedules, with certain revisions in the methods of estimating costs. The

(Testimony of Will T. Neill.)

examiners reviewed substantially all of the company's priced inventory; applied engineering tests to the property on which costs had been estimated; reconciled closely such recorded costs or averaged units costs determined in the 'Estimated Cost of Construction' schedules; verified the classification of property by accounts; test checked the application of recorded book overheads; made certain verifications of the physical inventory as of July 1, 1933, and test-checked projections to December 31, 1936; examined [298] schedules and supporting work sheets prepared by the company in connection with its study; inspected accounting records and related supporting documents; and made a field inspection of certain major units of physical plant.

'The staffs determined adjustments necessary to reflect the results obtained through the company's restudy of plant, including the cost of its Powerdale Hydroelectric generating station and certain land and land rights.

'The staffs are of the opinion that the company's priced inventory, after application of the adjustments hereinafter set forth, can be accepted as representing the original cost of the company's electric plant as of December 31, 1936. This acceptance is predicated on its relationship with the 'Estimated Cost of Construction' schedules as adjusted by the staffs, for which the priced inventory had provided a more accurate classification by accounts. It is also based on the cost of plant as shown by the company's plant accounts reflecting

(Testimony of Will T. Neill.)

its own construction and recorded construction costs of plant acquired from others, and certain estimates. Original cost of plant on an estimated basis represents approximately (7) per cent of the total.' "

That is a quotation, also, from the Joint Board Report, page 20, Exhibit 16 for identification.

Q. Now, after the Company's receipt of the Joint Report, which was on July 7, 1941, what attention did the staff of the [299] Company under your direction give to the comments and analyses and suggestions contained in the Joint Report?

A. Immediately upon the receipt of the staffs' Joint Report, the Company undertook a complete analysis of all the recommendations made in the Joint Report, which is Exhibit 16, for the purpose of determining what, if any, further studies which it did not have already under way could be made in order to dispose of some of the recommendations; and we have been prosecuting that work diligently ever since the Joint Report was received. [300]

Q. I would like to have you take up the proposed adjustments, item by item, and give us a brief statement as to what treatment has been accorded by the Company in its revised statements to those proposed adjustments. [302]

A. As I said before, those comments with respect to these various adjustments start on page 5 of the Introductory Statement in the document marked for identification as Exhibit 17. [303]

(Testimony of Will T. Neill.)

Q. Have you, in concluding, any general observation that you care to make about the Company's adjustments and the treatment which the Company has made on those adjustments?

A. Yes. I think we might refer to page 12 of the Introductory Statement, Exhibit 17, on the top of the page, which contains this statement, by comparing the Company's treatment of the examiners' proposed adjustments with the recommendations pertaining thereto contained in the Joint Report, it will be noted that the Company and the staffs are in accord as to the "Original Cost" (as defined by the Commission to exclude any restatement of unrecorded costs) of the various items of property to be recorded in Account 100.1, Electric Plant in Service, and Account 100.2, Electric Plant Leased to Others; and that such differences as now exist between the Company's Revised Statements and the recommendations of the Joint Report relate exclusively to the particular [352] Adjustment and other Accounts in which it is believed the differences between cost to utility and such original cost should be recorded.

Q. I believe now, Mr. Neill, we have finished the discussion of your Introductory and Explanatory Statement in Exhibit 17. I wish you would now take up the presentation of Revised Statement B. Perhaps we might save time by referring directly to Revised Statement B, to the Foreword, and give it directly as it is given to us there.

(Testimony of Will T. Neill.)

A. Our Revised Statement B starts with the title of the page being "Revised Statement B—Page 1", which is followed by an introductory foreword, starting on Revised Statement B—Page 2. I think the easiest way to present this material is to read it, which I shall do, starting at the top of "Revised Statement B—Page 2".

Q. Exhibit 17?

A. Exhibit 17. (Reading) "The text of the [353] Commission's Order of May 11, 1937, with respect to Statement B is as follows:

"Statement B showing for each acquisition by the reporting company or any of its predecessors of an electric operating unit or system, the original cost, estimated, if not known, the cost to such company and the amount entered in the books in respect thereto as of the date of acquisition. If the depreciation, retirement or amortization reserve was adjusted as of the date of acquisition and in connection therewith, a full disclosure of the pertinent facts should be made. The difference between the original cost and the amount entered in respect thereto of each acquisition of an electric operating unit or system, as of the date of acquisition, should be clearly stated, and a summary of all transactions affecting such difference between the date of the respective acquisition and January 1, 1937, and the resultant amount on the latter date, should be set forth. The amount to be included in Account 100.5, Electric Plant Acquisition Adjustments, as of January 1, 1937, shall be subdivided so as to show the amounts applicable

(Testimony of Will T. Neill.)

to (a) electric plant in service, (b) electric plant leased to others, and (c) electric plant held for future use. Whenever practical, such amount shall be classified according to nature, i.e., going value, structural value, etc. [354]

“ ‘Where estimates are used in arriving at original cost or the amount to be included in Account 100.5, a full disclosure of the method and underlying facts should be given. The method of determining the original cost of the electric plant acquired as operating units or systems should be described in sufficient detail to permit a clear understanding of the nature of the investigations which were made for that purpose.’ ” [355]

Q. At that point, Mr. Neill, probably it would be helpful if you would turn to Revised Statement B, page 15, and indicate what that sheet disclosed.

A. Revised Statement B, page 15, is a sheet on which we have shown the plant account entries of the Pacific Power & Light Company grouped for purposes of reclassification as of December 31, 1936, showing a total of \$33,865,609.21.

Q. As that statement indicates, your total plant account as of January 1, 1937 in the process of reclassification could be broken down into some twenty separately designated acquisitions of operating properties from predecessors; does it not?

A. That is correct.

Q. Plus the gross plant additions and retirements?

A. Yes. The first twenty items in this state-

(Testimony of Will T. Neill.)

ment, which are numbered as to acquisitions, 1 to 20, are amounts which are included in the total final amount of \$33,865,609.21 as representing the cost to the Company of those several acquisitions,—twenty of them.

Q. So that when you are talking in your Revised Statement B and in the “Foreword to Revised Statement B”, about your acquisitions, you are actually referring to the group listed in that exhibit, as shown on page 15 of Revised Statement B; is that correct?

A. That is right. [356]

Q. Now, go back to Revised Statement B, page 2, and pick up where you left off.

A. (Reading) “This Revised Statement B embodies the results of the further studies and analyses upon which the Company has been actively engaged since the filing of the original Statements on July 3, 1940. The method which the Company finally found necessary to adopt, as the most accurate means of determining ‘original cost’ of the property in service on December 31, 1936, as described on pages 3 and 4 of the foregoing Introductory and Explanatory Statement, dealt only with the various units of property remaining in service on the latter date, and did not provide a workable basis for determining the ‘original cost’ by acquisitions of the various properties acquired from predecessor operating utilities over the period from July, 1910, to December 31, 1936.

“At and prior to the time of filing its original Statement B, the Company’s staff was crowded to

(Testimony of Will T. Neill.)

the utmost with the vast amount of detail work necessary to complete the original cost studies, pursuant to the method finally found necessary for that determination, and to compile the results of those studies in proper form for filing by July 1, 1940, the date to which the Company had petitioned the Commission for an extension. It was then found impossible to formulate any method which seemed to offer the possibility of an accurate [357] determination of the original cost at time of acquisition of each of the various operating properties acquired by the Company from others in the years 1910 to 1936, inclusive, and the amount of the 'acquisition adjustment' applicable thereto. In the circumstances, the Company was obliged to submit its original Statement B without such segregation and with only a general explanation of the cost to the Company of the various acquisitions.

"The Joint Report comments in part on the Company's failure to accomplish this task, as follows:

'The Company has not made a study to determine the original cost of acquired property at dates of acquisition necessary to the proper classification of related adjustments with respect to Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments. Consequently, the examiners have established such adjustments in Account 107, Electric Plant Adjustments, pending the preparation of a study by the company to determine proper allocation.'

and we assume that paragraph (e) of the recitals

(Testimony of Will T. Neill.)

in the Commission's order of July 1, 1941, as well as sub-paragraph (i) of paragraph (C) of said order, relate in part at least to the examiners' criticism of Statement B as originally filed.

“Since filing its original Statements, the Company has undertaken anew to solve the problem of determining ‘original [358] costs’ by acquisitions, using for that purpose what now appear to it the most reliable, factually supported premises available for the purpose, and to tie-in the costs so determined with the ‘original costs’ as more accurately determined by the priced inventory as of January 1, 1937. Each acquisition has been carefully analyzed, its components have been traced back to their origins where possible, and the results of the analyses have been assembled in tabular form for each acquisition. In each instance, the methods, underlying facts, and premises relied upon are disclosed, and we believe ‘in sufficient detail to permit a clear understanding of the nature of the investigations which were made for that purpose’.

“The results so developed are shown on a summary sheet, entitled ‘Reclassification Summary Statement’, appearing as page 47 of this Revised Statement B. This Summary Statement assembles, under the various column headings there shown, by acquisitions and by totals, the results of the reclassification studies reflected in the Revised Statements; and it includes a reconciliation of the totals of such ‘original’ and ‘acquisition’ costs by acquisitions, with the total of the ‘priced inventory’ cost determina-

(Testimony of Will T. Neill.)

tion referred to in the quotation from the Joint Report set out on page 4 of the foregoing Introductory and Explanatory Statement. The classification by detailed plant accounts is presented in Revised Statement F, and is made as there shown on the basis of the 'priced in- [359] ventory'.

"In determining the amounts to be included in Account 100.5, Electric Plant Acquisition Adjustments, with respect to the various acquisitions so analyzed in Revised Statement B, the Company has proceeded on the premise, and takes the position, that total 'cost to the utility' of the properties obtained on each of these acquisitions is the total cost recorded on the Company's books at the time of acquisition, computed on the basis of the cash exchanges if any involved, and the par or stated value of the securities or obligations issued or assumed in the transactions; and, consequently, that the entire excess of such cost to the Company of the operating and leased electric properties, over the 'original cost' of such properties determined as set forth in the Revised Statements and subject to the reservation in respect thereof previously stated, should be recorded in Account 100.5 Electric Plant Acquisition Adjustments." [360]

Q. I wish you would take up that part of your foreword of the Revised Statement B that deals with the matter of segregation of the acquisition adjustment costs, and present that in such form as you see fit.

A. This part of foreword in Revised Statement

(Testimony of Will T. Neill.)

B, begins at the center of page 5 of the Revised Statement B, and reads as follows:

“Segregation of Acquisition Adjustment Costs.

“The text of the Commission’s Order of May 11, 1937, quoted above at page 1 of this Revised Statement B, provides in part:

“ ‘The amount to be included in Account 100.5, Electric ~~Plant~~ Acquisition Adjustments, as of January 1, 1937, shall be subdivided so as to show the amounts applicable to (a) electric plant in service, (b) electric plant leased to others, and (c) electric plant held for future use. Whenever practical, such amount shall be classified according to nature, i.e., going value, structural value, etc.’

“The only possible ‘subdivision’, of any amount shown in Account 100.5 in the Company’s Revised Statement B, is with respect to the amount of \$486,744.98 incurred by the Company as an acquisition adjustment cost in connection with the [367] acquisition of operating electric properties in the 1930 transaction. As appears on the Summary Statement, page 47 of Revised Statement B, some of these properties are classified in Account 100.1, Electric Plant in Service, and some in Account 100.2, Electric Plant Leased to Others;

“On page 8 of the foregoing Introductory and Explanatory Statement filed herewith, the following reference is made to an item of \$1,260,400 discussed on page 30 of the Joint Report:

“ ‘As will appear in the Company’s Revised Statement B, [368] the Company has found after further

(Testimony of Will T. Neill.)

studies and consideration that it is not practicable to classify the total in Account 100.5, Electric Plant Acquisition Adjustments, by amounts 'according to nature'; and this \$1,260,400, along with other amounts, is included in the Revised Statements as part of the total of Account 100.5.'

"The above quoted comment applies generally not only to the \$1,260,400 there referred to, but to all of the amounts classified in Account 100.5 in the analyses of the twenty separate acquisitions of utility property by the Company, the results of which are tabulated on the 'Summary Statement'. It will be noted that the first fourteen (14) of these acquisitions occurred 25 years or more ago; that the most important of these from a cost standpoint occurred in the years 1910 and 1911; and that, of the remaining six acquisitions, the only one of substantial size was No. 19, on July 31, 1930, on which the Account 100.5 acquisition adjustment cost is shown as \$486,744.98, on the basis of excess of cost to Pacific over so-called 'original cost' of the properties acquired at that time.

"The aggregate of the Account 100.5 acquisition adjustment costs on all acquisitions, plus certain of such costs aggregating \$14,177.27 shown on the Summary Statement in Column 5 opposite 'gross plant additions', is \$7,019,528.20, after giving effect to an offsetting item amounting to \$138,485.84, as shown on the Statement; and of this net total [369] all but \$488,269.86, and the \$14,177.27 so classified with 'gross plant additions', is classified in connection

(Testimony of Will T. Neill.)

with acquisitions antedating July 1, 1916. Of these, the largest item of acquisition adjustment cost was the item of \$6,239,335.1 (last figure illegible) involved in the acquisition of properties at the time of the Company's organization in July of 1910."

Mr. Laing: At this time, Mr. Examiner, I should like to offer for identification a copy of the minutes of the meeting of the Board of Directors of the Pacific Power & Light Company held on July 23, 1910.

Trial Examiner: It will be marked for identification as Exhibit No. 20.

(The Document Referred to Was Marked Exhibit No. 20 for Identification.)

Mr. Laing: I am offering this exhibit, No. 20, for identification at this time, Mr. Examiner, to indicate the scope and nature of the acquisition in July of 1910 and the offer of Weld M. Stevens to the Company on the basis of which the 1910 acquisition was consummated. The offer is made primarily for the purpose of providing information in the record as to the nature of that acquisition, if it is acceptable.

Mr. Slaff: I have no objection to its coming into evidence, Mr. Examiner.

Trial Examiner: Exhibit No. 20 will be received.

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(Testimony of Will T. Neill.)

HEARING EXHIBIT No. 20

Minutes of Special Meeting

Board of Directors

Pacific Power & Light Company

July 23, 1910

A special meeting of the Board of Directors of Pacific Power & Light Company was held at 71 Broadway, New York City, on Saturday, the 23rd day of July, 1910, at 12:30 o'clock in the afternoon, pursuant to a waiver of notice signed by all the directors of the company, of which the following is a true copy:

The undersigned, being all the directors of Pacific Power & Light Company, a corporation of the State of Maine, hereby waive notice of the time, place and purpose of a special meeting of said Board of Directors and consent that the same may be held at 71 Broadway, New York City, on Saturday, the 23rd day of July, 1910, at 12:30 o'clock P. M., for the transaction of such business as may come before the meeting.

Dated, New York, July 23, 1910.

R. J. McClelland

A. E. Smith

E. W. Hill

R. U. Fitting

G. J. Anderson

C. M. Hamilton

E. F. Roehn

(Testimony of Will T. Neill.)

F. F. Baker

E. W. Freeman

A. C. Dickson

James G. Campbell

William Reiser

H. B. Squier

E. P. Summerson

O. R. McMahon

There were present Messrs. E. W. Hill, A. E. Smith, R. U. Fitting, E. P. Summerson, H. B. Squier, A. C. Dickson, C. M. Hamilton, E. F. Roehn, O. R. McMahon, F. F. Baker, E. W. Freeman and J. G. Campbell.

Mr. A. E. Smith, the Chairman of the Board, acted as Chairman of the meeting, and Mr. E. P. Summerson, the Secretary of the Company, acted as Secretary of the meeting.

Mr. E. P. Summerson tendered to the meeting his resignation as Secretary of the company.

On motion duly seconded, Mr. Summerson's resignation as Secretary of the company was accepted.

On motion, duly seconded, Mr. E. P. Summerson was unanimously elected Assistant Secretary of the company.

On motion, duly seconded, Mr. George F. Nevins was unanimously elected Secretary and Assistant Treasurer of the company.

On motion, duly seconded, Mr. Guy W. Talbot was unanimously elected a Vice President of the company.

(Testimony of Will T. Neill.)

On motion, duly seconded, Mr. Edward Cookingham was unanimously elected a Vice President of the company.

On motion, duly seconded, Mr. L. A. McArthur was unanimously elected an Assistant Treasurer and an Assistant Secretary of the company.

On motion, duly seconded, the following resolution was unanimously adopted:

Resolved that all funds of this company on deposit in any bank or trust company, or other financial institution, shall be subject to withdrawal upon checks signed by the Treasurer or Assistant Treasurer or Cashier and countersigned by the Chairman of the Board or the President or any one of the Vice Presidents.

The Chairman presented to the meeting a communication from Weld M. Stevens offering to subscribe for one million five hundred thousand Dollars (\$1,500,000) par value of this Company's seven per cent. cumulative preferred stock, and Five million, nine hundred and ninety-seven thousand Dollars (\$5,997,000) par value of this company's common stock, upon the terms therein stated. The following is a true copy thereof:

July 23, 1910.

Pacific Power & Light Company,

Dear Sirs:—

I hereby subscribe for One million five hundred thousand Dollars (\$1,500,000) par value of your seven per cent. cumulative preferred stock, and Five

(Testimony of Will T. Neill.)

million nine hundred and ninety-seven thousand Dollars (\$5,997,000) par value of your common stock, the same being all your authorized capital stock not at the present time subscribed for. This subscription is made with the understanding that I may pay all thereof in cash, or, if I so elect, that I may pay Two hundred and fifty thousand Dollars (\$250,000) in cash from time to time as required by you, and the remainder by causing to be conveyed and transferred to you the following property:

A. (1) All of the property, real, personal and mixed, of the Astoria Electric Company, a corporation of the State of Oregon, free and clear of all encumbrances except

(a) A mortgage made by said Astoria Electric Company to Security Savings & Trust Company as Trustee dated April 1st, 1902, to secure an issue of \$150,000 of first mortgage bonds of which bonds the aggregate principal amount of \$150,000 are at present outstanding;

(b) Current liabilities at the time of transfer as hereinafter provided, not including any notes made by said Astoria Electric Company to the order of American Power & Light Company or any other indebtedness of said Astoria Electric Company to American Power & Light Company.

(2) All property, real, personal and mixed of the Yakima-Pasco Power Company, a corporation of the State of Washington, excepting only the two following contracts:

(a) One made by Robert E. Strahorn with

(Testimony of Will T. Neill.)

Northern Pacific Irrigation Company, dated September 21, 1908; and

(b) One made by Yakima Valley Power Company with Pasco Reclamation Company, dated December 10th, 1909;

said property to be conveyed free and clear of all encumbrances except the following:

1. (As to the property formerly owned by Northwest Light & Water Company) a certain mortgage made by Yakima Water, Light & Power Company to Security Savings & Trust Company, trustee, dated July 1, 1902, to secure an authorized issue of \$500,000 of bonds, \$133,000 in aggregate principal amount of which bonds are at present outstanding; exclusive of the amount of said bonds which I hereinafter agree to deliver to you.

2. (As to the property formerly owned by Northwest Light & Water Company) a certain mortgage made by said Company to Washington Safe Deposit & Trust Company, as trustee, dated November 1, 1905, to secure an issue of \$230,000 in aggregate principal amount of bonds, of which \$63,000 in aggregate principal amount of said bonds are at present outstanding; exclusive of the amount of said bonds which I hereinafter agree to deliver to you.

3. (As to property formerly owned by Yakima Valley Power Company) a certain mortgage made by said Company to Spokane & Eastern Trust Company, as Trustee, dated December

(Testimony of Will T. Neill.)

15th, 1908, to secure an authorized issue of bonds aggregating \$300,000 in principal amount of which \$14,000 in aggregate principal amount of bonds are now outstanding, exclusive of the amount of said bonds which I hereinafter agree to deliver to you.

4. Current liabilities at the time of transfer as hereinafter provided, not including any notes made by Yakima-Pasco Power Co. to the order of American Power & Light Company or to the order of General Electric Company, or any indebtedness of any kind of said Yakima-Pasco Power Company to said American Power & Light Company.

(3) All the property, real, personal and mixed, of the Columbia Power & Light Company, a corporation of the State of Washington, free and clear of all encumbrances except:

1. A certain mortgage given by Walla Walla Gas & Electric Company to Wells Fargo and Company, trustee, dated December 1, 1900, to secure an authorized issue of bonds aggregating \$100,000 in par value, whereof \$81,000 in aggregate principal amount are now outstanding;

2. A certain mortgage given by Northwestern Gas & Electric Company to Real Estate Trust Company of Philadelphia as trustee, dated September 15, 1903, to secure an authorized issue of bonds aggregating \$650,000 in par value,

(Testimony of Will T. Neill.)

whereof \$526,000 par value in aggregate principal amount are now outstanding; and

3. All liabilities of Northwestern Corporation, if any, under a certain lease made by Walla Walla Valley Traction Company to Northwestern Gas and Electric Company, dated July 2, 1906, and recorded in the office of the auditor of Walla Walla County in book 104 of deeds at page 195, and in the office of the recorder of Umatilla County in volume 49 of deeds at page 517.

4. Current liabilities at the time of transfer as hereinafter provided, not including any notes made by Columbia Power & Light Company to the order of American Power & Light Company or to the order of General Electric Company, or any other indebtedness of said Columbia Power & Light Company to said American Power & Light Company.

(4) All of the capital stock of the Walla Walla Valley Railway Company, a corporation of the State of Oregon, except directors' qualifying shares.

B. (1) One hundred thirty-seven thousand dollars (\$137,000) in aggregate principal amount of the First Mortgage Five Per Cent. Gold Bonds of Yakima Water, Light & Power Company, secured by a mortgage or deed of trust made by that company to Securities Savings & Trust Company, as trustee, and dated July 1st, 1902.

(Testimony of Will T. Neill.)

(2) One hundred sixty-seven thousand dollars (\$167,000) in aggregate principal amount of the Five Per Cent First Mortgage Gold Bonds of Northwest Light & Power Company, secured by a mortgage or deed of trust made by that company to Washington Safe Deposit & Trust Company, as Trustee, dated November 1, 1905.

(3) Two hundred eighty-six thousand dollars (\$286,000) in aggregate principal amount of the Five Per Cent First Mortgage Gold Bonds of Yakima Valley Power Company, secured by a certain mortgage or deed of trust from said company to Spokane & Eastern Trust Company, as Trustee, dated December 15, 1908.

In case I elect to pay my said subscription by the transfer and conveyance of the properties above referred to, it is understood and agreed:

1. That the transfer is to take place as of July 1, 1910. You will be entitled to receive as of that date all of the current assets and cash on hand of the Astoria Electric Company, Yakima-Pasco Company and Columbia Power & Light Company;

2. That you will assume and agree to pay the current liabilities referred to in subdivisions "(1)", "(2)" and "(3)" of paragraph "A" above, and also any bonds not to be conveyed to you outstanding under any of the mortgages referred to in subdivisions "(1)", "(2)" and "(3)" of paragraph "A" above.

3. That you will make, issue and deliver to

(Testimony of Will T. Neill.)

me, or upon my order, First and Refunding Mortgage Five Per Cent Twenty Year Gold Bonds of your company of the aggregate principal amount of Three million two hundred thousand Dollars (\$3,200,000) secured by a mortgage and deed of trust in form satisfactory to me and covering the property to be transferred and conveyed to you by me.

If my proposition is acceptable to you, will you kindly accept the same promptly in writing, and oblige

Yours truly,

WELD M. STEVENS.

On motion, duly seconded, it was unanimously

Resolved, that the subscription of Weld M. Stevens for \$1,500,000 par value of this company's seven per cent. cumulative preferred stock, and \$5,997,000 par value of this company's common stock, in the form presented to this meeting, and the terms thereof, be and are accepted and that the officers of this company be and are authorized and directed to notify said Weld M. Stevens in writing of this company's acceptance of his proposition and to take all steps necessary, proper or convenient for the performance by this company of each and every obligation assumed by it by the acceptance of said proposition.

On motion, duly seconded, the meeting adjourned.

E. P. SUMMERSON,

Asst. Secretary.

(Testimony of Will T. Neill.)

Q. Now, you have just explained that the largest acquisition adjustment of this whole list was the item of \$6,239,335.19, which was involved in connection with the acquisition of the properties at the time of the Company's organization in July of 1910, which was the acquisition, is it not, that was reflected in the minutes of the Directors' meeting of July 23, 1910? [371]

A. It is, yes.

Q. In Exhibit 20. Now, will you take up your discussion of that first acquisition and explain what the problem confronting you was in connection with trying to subdivide or classify it?

A. I will read from the beginning of the second paragraph on page 7 of the Revised Statement B.

“Referring to this first major item, the Company, after further study and consideration, has reached the conclusion that no accurate basis now exists for segregating the total of \$6,239,335.19 ‘according to nature’ of its components. This amount constitutes the difference between the cost to Pacific and the ‘original cost’ of the electric utility property acquired by Pacific in 1910, as determined in the manner and subject to the reservation referred to in Revised Statement B. The present officers of the Company have no knowledge, or means of knowledge, thirty years or more after the event, as to the weights which may have been given by the directors of the Company in 1910 to the various elements of value inherent in the properties so acquired in July of that year.

(Testimony of Will T. Neill.)

“In our opinion, however, this 1910 acquisition adjustment cost represents the then directors’ judgment as to the net effect of all of the elements, then actually or potentially present, of appreciation over original cost to the first utility users, as now determined in the manner stated. Among such [372] elements, we believe, were the following: any increase in structural values and costs over such ‘original cost’ of the properties so acquired; such values and costs as may have been attributable to the integration of the various properties, in the course of their development in the hands of the 43 predecessor owners indicated on the chart on page 23 of Statement A, these being values and costs which would not be reflected in such ‘original cost’ statement; the going value, or the value of the then established and acquired business and properties, over the bare bones cost of the physical properties; the added values contemplated from the consolidation and further integration of these properties into a more efficient operating system under competent and experienced utility management, and under the sponsorship of a holding company in a position to assist Pacific in financing its future growth and development; the added values contemplated from the aggressive development of the electric business with improved service and more favorable rates, and in a territory presenting favorable opportunity for rapid growth and for new and increased uses of electric service; and such values as may have been attributed to the water

(Testimony of Will T. Neill.)

rights appurtenant to the hydroelectric plants to be acquired in the transaction, over and above their 'original cost' as so determined. These and perhaps other elements may have entered into the determination of values underlying the incurring of such acquisition adjustment costs at that time; but as indicated [373] above, any attempt at this time to segregate these elements by specific amounts 'according to nature' would be almost wholly speculative, and for that reason is deemed impracticable.

"The next acquisition adjustment cost shown on the Summary Statement is the amount of \$23,759.81, arising in connection with Acquisition No. 2, the electric properties of Husum Power Company, which were bought by Pacific Company directly from the original owners in 1911. The acquisition cost there shown represents the difference between cost to Pacific Company, or the 1911 market value as determined by the purchase price, and the 'original cost' as determined for the purposes of this Statement. This appreciation would cover any increase in structural values and costs which may have existed, any going value developed in the property, and any other elements of value inherent in the property at the time of the purchase.

"On Acquisition No. 3, The Prosser Power Company, an acquisition adjustment cost of \$5,738.56 is shown in Column 5 of the Summary Statement, as compared with a presently determined 'original cost' in Account 100.1 of \$80,968.99. The acquisition adjustment cost is relatively small, and may

(Testimony of Will T. Neill.)

properly be attributed to increased structural values or costs and to going value, either or both. In any event, it represents the appreciation, measured by the difference in market value on an arm's length purchase, over the presently determined 'original cost'. In this case also, the properties had [374] passed through various ownerships prior to Pacific's purchase in 1911, which doubtless involved some integration costs and values not reflected in presently estimated 'original cost'.

"On acquisition No. 5, Hood River Light & Power Company, an acquisition adjustment cost of \$164,979.19 is shown in Column 5 of the Summary Statement, as compared with a presently determined 'original cost' in Account 100.1 of \$81,572.56. This acquisition was made by the Pacific Company from the last of three owners of the properties involved, and the acquisition adjustment cost must be assumed, as in the case of the 1910 transaction, to represent all of the elements of value and cost, as reflected by the market or purchase price, deemed to inhere in the properties at the time of the purchase. A similar explanation applies to Acquisition No. 6, the Tucannon Power Company, as to which an acquisition adjustment cost of \$39,260.64 is shown in Column 5, as compared with a presently determined 'original cost' in Account 100.1 of \$52,104.26; and to Acquisition No. 7, Dayton Electric Company, as to which an acquisition adjustment cost of \$40,648.17 is shown,

(Testimony of Will T. Neill.)

as compared with a presently determined 'original cost' in Account 100.1 of \$56,761.37.

"With respect to Acquisition No. 12, Hydro Electric Company, an acquisition adjustment cost of \$115,718.63 is shown in Column 5, as compared with presently determined 'original cost' in Account 100.1 of \$68,290.50. This property was [375] acquired by Pacific in 1915. The basis of the determination of original cost is explained in Statement 12, Acquisition No. 12, on page 31 following. That analysis proceeds on the assumption, however, that the 'original cost' of the lands and water rights involved was the \$15,034.91 presently estimated from deed records as the market value in 1909 of ordinary acreage in the Hood River Valley. Actually, further analysis discloses that the first owner to put these particular lands and water rights to electric utility use was Hydro Electric Company, which was organized early in 1911 by the owners of two substantial blocks of riparian lands and water rights along the stream of Hood River, one block of which had been partially developed for power to operate a local mill, but which was not operated as a public utility until Hydro Electric Company constructed its electric power plant on these lands and engaged in furnishing electric service by means thereof. (See Statement A, pages 83 and 84).

"The owners of these two blocks of land and water rights, N. C. Evans and Watt Development

(Testimony of Will T. Neill.)

Company, transferred their respective properties to Hydro Electric Company for a price of \$150,000, paid one-half to each in the capital stock of the company in that amount of par value; and from an accounting standpoint, it appears that this \$150,000 might properly be taken as the 'original cost' of these lands and water rights. If that were done, the acquisition adjustment cost of [376] \$115,718.63 now shown in Column 5 of the Summary Statement would be converted into a red figure, or a credit to the acquisition adjustment account, in the amount of \$19,246.46. In any event, it is fair to assume that this \$115,718.63, now classified under Column 5 as acquisition adjustment cost to Pacific, includes recognition of values greatly in excess of the \$15,034.91 used in the Revised Statement B for these lands and water rights (for which Hydro Electric Company paid \$150,000 in its capital stock), as well as recognition of whatever going value the business may have developed at the time of Pacific's acquisition. In view of the competitive situation which prevailed for a time between Hydro Electric Company and Pacific, it is also fair to assume that the purchase price to Pacific may have been influenced by and have included recognition of a 'nuisance value' of the properties in the hands of the original stockholders of Hydro Electric Company."

By Mr. Laing:

Q. Mr. Neill, when you refer to Column 5, you

(Testimony of Will T. Neill.)

are talking about this Reclassification Summary Statement that appears on page 47 of the Revised Statement B? A. That is correct.

Q. Where each of these acquisition adjustment accounts is listed in Column 5, that is about the middle of the statement, is that correct?

A. That is correct. I thought we had made that plain. [377]

Q. I just want to emphasize it.

A. (Continuing) "On acquisition No. 13, Seaside Light and Power Company, an acquisition adjustment cost of \$21,683.76 is shown in Column 5, as compared with a presently determined 'original cost' in Account 100.1 of \$65,000. The acquisition adjustment cost there shown represents the difference between cost to Pacific Company, or the 1916 market value as determined by the purchase price, and the 'original cost' as determined for the purpose of this Statement. This appreciation would cover any increase in structural values and cost which may have existed in 1916, any going value then developed in the property, and any other elements of value inherent in the property at the time of its purchase by Pacific. Similar comment would apply to the \$1,512.62 of acquisition adjustment cost shown in Column 5 with respect to Acquisition No. 17, Cannon Beach Electric Company, as to which an 'original cost' of \$1,705.69 is shown in Account 100.1. [378-382]

Mr. Laing: Mr. Examiner, I would like to offer at this time an exhibit for identification. It

(Testimony of Will T. Neill.)

is a copy of the minutes of the Board of Directors of the Pacific Power & Light Company, held July 29, 1930, at which the major acquisition of 1930 was authorized by the Board of Directors of the Pacific Power & Light Company. I want to say with regard to these minutes that I have had made a complete copy of the minutes of the meeting, with the exception of certain documents, the [383] omission of which is noted, which consisted of the form of coupon bonds and things of that kind, and a detailed description of certain properties which seemed unnecessary for this purpose to incorporate in the minutes.

Trial Examiner: It will be marked for identification as Exhibit 21.

(The document referred to was marked Exhibit No. 21 for Identification.)

Mr. Laing: Have you any objection to that going in as an exhibit?

Mr. Slaff: No; there is no objection.

Trial Examiner: All right. Exhibit 21 will be received.

(Exhibit No. 21 Was Received in Evidence.)

By Mr. Laing:

Q. Mr. Neill, will you take up Acquisition No. 19, which is the one that occurred in July of 1930, to which reference is made in these minutes now introduced in evidence as Exhibit 21, and tell us about the acquisition adjustment costs involved in that transaction.

(Testimony of Will T. Neill.)

A. I will start at the top of page 12 of Revised Statement B, immediately following the line on which I made the correction just before the noon recess. (Reading)

“The principal remaining acquisition adjustment cost is the amount of \$486,744.98, on Acquisition No. 19, Inland Power & Light Company properties, involved in the 1930 acquisition. [384] As previously stated and as shown on the Summary Statement, \$203,526.40 of this cost is allocated to the \$1,156,766.25 of original cost of property in Account 100.2, Electric Plant Leased to Others; and the remainder, or \$283,218.58, is allocated to the \$2,341,891.73 of property in Account 100.1, Electric Plant in Service. The Company knows of no practical method of breaking down the \$486,744.98 of acquisition adjustment costs, ‘according to nature’ of its components. It would cover any increases in structural values and costs that may have existed, any going value that may have been developed in the properties, and any other elements of value inherent in the properties, at the time of their acquisition by Pacific. [385]

Q. Let us pass for the moment to Revised Statement I and tell us about that.

A. Revised Statement I is a statement required by the Commission’s order of May 11, 1937 for showing certain statistical information relative to various classes of electric plants, including production plants, transmission plants, distribution plants, and other classes of property. [453]

(Testimony of Will T. Neill.)

I will read what is stated in the Foreword to Revised Statement I.

“Revised Statement I embodies the revisions of former Statement I which were made necessary by changes in the determination of ‘original costs’ of electric property as of January 1, 1937, resulting from adjustments recommended in the Joint Report and accepted by the Company, and from changes in the classification of certain properties between Transmission and Distribution.

“The original costs shown in this Revised Statement I are the ‘original costs’ determined as of January 1, 1937, in accordance with the Uniform System of Accounts and the Commission’s interpretation thereof, to which reference has been made in the foregoing Introductory and Explanatory Statement; and the statement of such ‘original costs’ in Revised Statement I is subject to the explanation and to the reservation of rights set forth on pages 12 to 15 of said Introductory Statement.”

Q. Now, this Revised Statement I consists of some sixteen additional pages?

A. That is correct.

Q. Which, as I understand it, are purely statistical compilations, and the revisions made from the former Statement have been spoken of in general terms in that Foreword. Is there any additional explanation that you feel is necessary, [454] Mr. Neill?

A. I think the only additional explanation I

(Testimony of Will T. Neill.)

might make with respect to this is that the original cost is subject to the reservations which I have just read, which are the original costs revised to reflect the recommendations in the Joint Report which are accepted by the Company. The other changes consist primarily of the reclassification of the transmission and distribution plants, along the same line that I spoke of yesterday, in connection with the revision of parts of which, in which the first original cost reclassification was based on a little different classification of lines and substations, between distribution and transmission, than is the revised classification. That change is reflected in Revised Statement I.

Q. So far as you know, Mr. Neill, are there any differences between you and the joint examiners with respect to the matters shown in Revised Statement I?

A. I believe not. During the examination, we agreed with the examiners, both of the Federal Power Commission and of the Oregon Public Utilities Commissioner, as to the classification of lines and substations; and, so far as I know, there are no differences now between us.

Q. Now, let us refer back to your Revised Statement B, Mr. Neill. When we left the discussion of that Foreword to Revised Statement B, I think we had gotten down to the [455] close of the incomplete paragraph at the top of page 13 of Revised Statement B. I wish you would take it up

(Testimony of Will T. Neill.)

from there and discuss the remainder of the Foreword.

A. I believe I should finish reading the Foreword, which is on page 13, Revised Statement B, Exhibit 17: (Reading)

“For convenience of reference, and for whatever interest the presentation of the information in this form may have to the Commission, the Summary Statement includes an analysis, in Columns 6 and 7, ——”

By Mr. Laing:

Q. (Interposing) As shown by the Summary Statement you made, page 47?

A. Yes. (Continuing reading) “——of the 100.5 acquisition adjustment costs shown in Column 5.” That, again refers to page 47, Revised Statement B, Column 5. (Continuing) “——to reflect the differences between costs to American and costs to Pacific in the major 1910 and 1930 transactions. Column 6 shows that part of the acquisition adjustment costs in Column 5 which represents the differences between costs to Pacific and the costs to American; and Column 7 shows the remainder of the acquisition adjustment costs, or the amounts in Column 5 less the amounts in Column 6, respectively.

“The figures employed in making the computations under Column 6 are the figures of cost to American which have been supplied by American, at the request of the Commission’s staff, [456] from time to time during the course of the staff’s

(Testimony of Will T. Neill.)

investigation and studies of the original Statements filed with the Commission on July 3, 1940. No consideration has been given in these computations of acquisition adjustment costs to the amount of \$161,500, representing the discount and expense incurred by American on the sale of \$1,250,000 in par value of Pacific's 7% Preferred Stock, received by American as part of the 1910 transaction; or to the amount of \$25,000 of discount incurred by American on the resale to Pacific of the \$500,000 in stated value of the \$6 Preferred Stock of Pacific, which American received in the 1930 transaction. If the aggregate of these two amounts, or \$186,500, of discount and expense so incurred by American in marketing this preferred stock, were taken on Pacific's reclassification statement as Capital Stock Discount and Expense, in Accounts 150 and 151, the amounts now shown as the respective acquisition adjustment costs on the 1910 and 1930 transactions would be correspondingly decreased."

Q. Mr. Neill, at that point, can you give us the source of your information, or, rather, the source of the information that was passed on to the Commissions' staffs with respect to those two items of Capital Stock Discount and Expense, Accounts 150 and 151? You have just referred to them in your reading.

A. Yes. The source of the information from which [457] those figures were derived from the American Power & Light Company were trans-

(Testimony of Will T. Neill.)

mitted to either Mr. Flynn, Mr. O'Neil, or Mr. Pentney on September 10, 1940 and on January 30, 1941.

Q. What amount of additional investment did the American Power & Light Company make in the stock of Pacific Power [458] & Light Company at that time,—in the common stock of the Pacific Power & Light Company?

A. It made an additional investment of common stock of Pacific Company in the amount of \$1,868,767.25.

Q. That investment includes, does it not, the \$25,000 of capital stock discount that was referred to?

A. That is correct.

Q. By examination of the statement that you furnished to Mr. O'Neil with your letter of September 10, 1940, or any other letters that were furnished to the staff in connection with the 1910 transaction, or from any other sources of information, have you been able to arrive at a determination of the American's investment in common stock prior to this increase in 1930?

A. That can be calculated from those statements, and the amount was \$1,009,251.34.

Q. That was prior to 1930?

A. That was prior to the 1930 acquisition,—transaction.

Q. Which would make a total amount as of the end of 1936, or as at the present time of what total?

A. If we add to the \$1,009,251.34 prior to the

(Testimony of Will T. Neill.)

1930 transaction, the increase of American's investment in the common stock of Pacific Company, carrying through the 1930 transaction, the investment of American in Pacific common stock [459] as of December 31, 1936, is \$2,878,018.59.

Q. In giving that figure for the investment prior to the 1930 transaction, you have again assumed as part of American's costs, have you not, \$161,500 of Capital Stock Discount and Expense incurred in connection with preferred stock that went along in that transaction?

A. I have.

Q. And you have also included, I assume, the \$100,000 of common stock that the American bought for cash sometime prior to 1930, have you not?

A. Yes, sir, that was—American bought that 1,000 shares of common stock for cash on May 19, 1915, and that was included in the one million, nine thousand odd amount.

Q. Now, will you take up the concluding paragraph, or page, of your Revised Statement B, and tell us what else you have got to say, Mr. Neill.

A. I will continue reading from page 14 of Revised Statement B.

“It should be understood that the figures of cost to American, referred to in the two preceding paragraphs, reflect only a part of American's investment in and contributions in behalf of the Pacific Company. The latter, in addition to the amount of Pacific's note indebtedness to American

(Testimony of Will T. Neill.)

shown on the balance sheet as of January 1, 1937, in Revised Statement G, and the amount of American's cash invest- [460] ment in Pacific's common stock, may properly be considered as including the very large expenditures made by American from early in 1910 until plans therefor were necessarily suspended several years ago, toward making possible the construction of a major hydroelectric project on the Columbia River at Priest Rapids, as a source of cheap power for industrial development in Pacific's operating territory and for future anticipated requirements of Pacific's growing utility business.

"The Company has furnished to the Commission's staff copies of this Revised Statement B, with detailed data, memoranda, and explanations pertaining thereto and to the studies reflected therein."

Q. That never materialized, did it?

A. No, it did not.

Q. During the period from 1910 to 1920, the problem involved the question of legislation authorizing the construction of such projects, did it not?

A. I believe it did.

Q. Do you remember when the Federal Water Power Act was passed?

A. I believe it was in 1920.

Q. What other problems were involved in getting that project under way after the Federal Water Power Act made it possible to secure licenses

(Testimony of Will T. Neill.)

for the construction of such pro- [461] jects on navigable streams?

A. As I understand that project, the difficulties after the license had been obtained, were due to the fact that a very large project, the support of which would require the development of a great deal of load, particularly industrial load, was a project that required a major expenditure of money. We know that the American Power & Light Company put a great deal of time and effort in surveying certain raw materials which could be used for electro-chemical and electro-metallurgical purposes and other industrial processes. As I understand the situation, it was the magnitude of the project and the coming on of the depression which combined to make the thing unfeasible; that is, for immediate construction, and subsequently, of course, the development of the Federal projects along the Columbia River has further postponed the possibility of construction of that power development.

Q. Approximately what is the location of the Priest Rapids project, Mr. Neill?

A. Well, it is on the Columbia River, best located, I think, by a map in Statement A of—

Q. How about the map on page 6 of Exhibit No. 15? Could you spot it on there?

A. I do not know the exact location of dam-site; but the location of the project, as I understand it,—

(Testimony of Will T. Neill.)

Q. It would be south of Beverley in about where that [462] bend in the river is, isn't it?

A. I was going to say it would be between the towns of Beverley and White Bluffs, down there just at the bend in the river.

Q. Have you any information as to the approximate amount of money the American put into that thing before it found it necessary to suspend?

A. I understand that they invested at least \$4,000,000 without accrued interest in that effort.

Q. They now have the lands, of course, but there is no project built; is that correct?

A. No; they have the lands. Of course, I spoke of the industrial power developments but there is also in connection with this project plans for very heavy irrigation development. This dam that they were proposing to construct in the river would supply both power, and I believe, water necessary for the irrigation of large areas of land in that part of the Columbia River Basin. [463]

Mr. Slaff: Mr. Examiner, I should like to reserve a motion to strike the testimony with respect to the Priest Rapids development and the alleged expenses to American, and so on, that has been the subject of these last few questions and on the subject of some testimony prior to Mr. Neill's reading the last paragraph on page 14 of Statement B, because I think it is entirely irrelevant to this proceeding. Perhaps it would be more convenient if I reserve that motion to strike and when we have a transcript of

(Testimony of Will T. Neill.)

the testimony tomorrow morning and relate it to the exact spot in the testimony.

Trial Examiner: I think perhaps that is true. The Examiner will hear you later on the motion to strike. [465]

Q. I don't like to again have you read your verification of this entire exhibit, but I would like to ask you, Mr. Neill, whether the work that has been done and which is [472] reflected in this exhibit, represents, in your knowledge and opinion, an accurate and full return to the various matters that the Commission has asked for in its Uniform System of Accounts, Instruction 2-D, in its Order of May 11, 1937?

A. I think it does.

Mr. Laing: I would like to offer the exhibit in evidence, Mr. Examiner .

Mr. Slaff: Exhibit 17?

Mr. Laing: Yes.

Mr. Slaff: No objection.

Trial Examiner: Exhibit 17 will be received.

(Exhibit No. 17 was received in evidence.)

Mr. Laing: At the same time, I would like to offer in evidence Exhibit No. 18, which is a copy of a letter of transmittal of this exhibit to the Commission.

Mr. Slaff: No objection.

Trial Examiner: . Exhibit 18 will be received.

(Exhibit No. 18 was received in evidence.)

[473]

(Testimony of Will T. Neill.)

HEARING EXHIBIT No. 18

Pacific Power & Light Company

Public Service Building

Portland, Oregon

September 27, 1941

Air Mail

Federal Power Commission

Washington, D. C.

Re: Reclassification of Electric Plant
Account

FPC Docket No. IT-5611

Dear Sirs:

On July 3, 1940, Pacific Power & Light Company filed with the Commission a volume entitled "Reclassification of Electric Plant—Statements A to I, inclusive", which had been prepared by the Company pursuant to Electric Plant Instruction 2-D of the Commission's Uniform System of Accounts, and to the Commission's order pertaining thereto adopted May 11, 1937. The Company's letter to the Commission of July 1, 1940, transmitting this volume, stated among other things that it might be "necessary to make amendments to or revisions in such statements."

Since that date, the Company has been continuously engaged in making further studies and analyses of the problems involved, and has considered criticisms and suggestions contained in the Joint Report of the examiners for the Commission and the

(Testimony of Will T. Neill.)

Public Utilities Commissioner of Oregon, served on the Company on July 7, 1941, and has had various consultations with the Commission's staff relating to these problems. It has also received and considered the various provisions of the "Order Resuming Hearing and to Show Further Cause" entered by the Commission on July 1, 1941, in Docket IT-5611.

The results of these further studies, analyses and consideration have been compiled in Revised Statements B, E, F, G, H, and I, respectively, with an "Introductory and Explanatory Statement" in the form of a letter addressed to the Commission dated September 26, 1941, all of which have been assembled in a single volume with identifying cover page, these statements being verified by the affidavit of the undersigned dated September 26, 1941. Three signed counterparts of this volume are transmitted herewith for filing with the Commission.

The material assembled in this volume has been made available to the members of the Commission's staff now at Portland in preparation for the hearing on September 29, from time to time as the various statements were compiled. One complete copy of the volume was delivered to the Commission's staff at Portland yesterday, September 26, and additional copies are being delivered to the staff today.

The submission of these Revised Statements is subject to the reservation of rights by the Company set forth in the Company's letter of July 1, 1940, transmitting the original statements, and to the res-

(Testimony of Will T. Neill.)

ervations set forth in the Revised Statements themselves and in the accompanying Introductory and Explanatory Statement, and in the Company's Motion to Dismiss in the proceeding scheduled for hearing on September 29, 1941, transmitted to the Commission today by the Company's attorneys.

In addition to this volume of Revised Statements, the Company also transmits and files herewith three copies each of the four system maps contained in Statement A, showing transmission line and other data as of December 1910, March 1915, November 1924, and December 1936, appearing as pages 64, 85, 90 and 8 (also 114) respectively, of the printed Statement A filed July 3, 1940. The same four maps were assembled in a single long sheet on page 16 of Statement A, which we have not reproduced in these corrected maps. These four revised maps as of said several dates embody certain minor changes found necessary to reflect the Company's present understanding of the Commission's classification of property as between transmission and distribution, as followed in the Revised Statements.

Yours very truly,

WILL T. NEILL

Will T. Neill

Vice President

Q. Mr. Neill, I wish you would take up the matter of Revised Statement H, which is a statement

(Testimony of Will T. Neill.)

which deals with the suggested plan for handling the amounts in these adjustment accounts; and discuss it in such detail as you see fit. Perhaps the simplest way would be for you to present it as you have it in your Exhibit 17.

A. I think that is the fastest way to do it, and the [478] most effective. I shall read the Foreword to Revised Statement H, beginning on page 2 of Revised Statement H: (Reading)

“The Commission’s Order of May 11, 1937, requires each utility, in submitting the information called for in Electric Plant Instruction 2-D of the Uniform System of Accounts, to furnish among other things the following:

‘Statement H giving a suggested plan for depreciating, amortizing, or otherwise disposing in whole or in part of the amounts, as of January 1, 1937, includible in Account 100.5, Electric Plant Acquisition Adjustments, and Account 107, Electric Plant Adjustments.’

and paragraph (C) of the Commission’s Show Cause Order of July 1, 1941, in Docket No. IT-5611, directs the Company among other things to

‘show further cause, if any there be:

* * * * *

‘(iii) Why the Company should not submit a plan for the disposition of the amounts which may be properly established in Account 100.5, Electric Plant Acquisition Adjustments, in accordance with the evidence adduced at said hearing;

(Testimony of Will T. Neill.)

‘(iv) Why the Company should not submit plans for the disposition of the amount of \$9,-694,593.47, classified in Account 107, Electric Plant Adjustments;’

“The Company’s original Statement H, filed with the Com- [479] mission on July 3, 1940, was necessarily based upon its then proposed reclassification of electric plant account, as reflected in Statements B, E, F, and G, submitted at the same time. The Revised Statements B, E, F, and G, filed herewith, reflect the results of the further studies and analyses made by the Company since the date of original filing, as explained in said Revised Statements, and the premises and data from which such results were derived, and necessitate the compilation of Revised Statement H.

“For example, Revised Statement B, for the reasons therein stated, attempts no segregation ‘according to nature’ of the amounts therein shown in Account 100.5, Electric Plant Acquisition Adjustments, as was attempted in the original Statement B; it establishes no ‘credit balance’ in Account 107, as was shown in the original reclassification; and the only amount now classified by the Company in Account 107 is the sum of \$42,554.68 (see Item (3) on page 6 of the Introductory Statement) which the examiners and the Company agree was improperly capitalized as costs of construction, and should therefore be removed from plant account. This Revised Statement H is therefore based upon and deals with the ‘acquisition adjustments’ shown in Revised State-

(Testimony of Will T. Neill.)

ment B; and it also deals with the amounts proposed to be transferred to Account 140, Unamortized Debt Discount and Expense, as shown on the Summary Statement of Revised Statement B, which in [480] the Joint Report (pages 32 to 34) are reclassified, pending disposition, in Account 107, Electric Plant Adjustments.

“Referring now to sub-paragraphs (iii) and (iv) of the Commission’s Show Cause Order of July 1, 1941, in Docket No. IT-5611, the Company has no serious objection (and it did not object at the time of filing its original Statement H) to filing with the Commission as part of its reclassification statement an explanation of the Company’s views and suggestions as to the treatment which should be given to any amounts, as of January 1, 1937, which the Company deems properly classifiable in any of the above numbered Accounts. It does object, however, and it earnestly protests, that the Company should not be required to engage in a speculative determination in advance, in a proceeding or investigation to determine the proper reclassification of the Company’s Electric plant accounts, as to what amounts may finally be determined by the Commission to be properly classified in any so-called Adjustment Accounts, and, on the basis of such speculation, to propose a plan for the disposition of such presently unknown amounts.

“It also protests that the Commission may not reasonably or lawfully require the Company to ‘dispose of’, in the sense of writing off or removing from

(Testimony of Will T. Neill.)

its books of account, any amounts now shown thereon which may represent values inherent in the Company's property; and that the question of [481] the existence of such value is not a matter of accounting, but one requiring judicial investigation and determination on the basis of all relevant evidence of value as of the time of the inquiry. It further protests, in particular, that the requirement of sub-paragraph (iv) referred to above is unreasonable and unlawful, in that, at the present stage of the proceeding, there is no 'amount of \$9,694,593.47, classified in Account 107, Electric Plant Adjustments', such amount representing merely a combination of certain figures referred to in the Joint Report of the examiners (Joint Report, page 31), the proposed reclassification of which has not been accepted, except in part, by the Company, and none of which has yet been passed upon by the Commission. This Revised Statement H is therefore submitted subject to the foregoing objection and protest, and to the reservation by the Company of all of its rights and remedies with respect thereto, and with respect to any assumption of authority by the Commission to order a 'disposition', other than that proposed by the Company, in this Revised Statement H, of any amounts that may finally be held to be properly classifiable in either Account 100.5 or Account 107." [482]

"Account 107, Electric Plant Adjustments: The Company proposes to dispose of the amount of \$42,554.68, reclassified on the Summary sheet of Revised Statement B in Account 107, Electric Plant Ad-

(Testimony of Will T. Neill.)

justments, by crediting Account 107 and charging Account 271, Earned Surplus with the entire amount of \$42,554.68. This proposal is made for the reason that this net amount is now recognized as having been erroneously accrued on the Company's books as a cost of construction and charged to plant account as such.

"Account 100.5, Electric Plant Acquisition Adjustments: The Company proposes to dispose of the amount of \$7,019,528.20, shown on the Summary sheet of Revised Statement B as the total reclassified to Account 100.5, Electric Plant Acquisition Adjustments, by retaining said amount in said Account 100.5 until the time or times of the complete retirement or disposition of the respective systems to which the components of this total respectively apply; and at such time or times to remove from Account 100.5 so much thereof as pertains to the system acquisitions then retired or disposed of.

"In the event of the complete retirement or disposition of any system representing less than the total of one of the several acquisitions listed on said Summary Statement, [485] an apportionment will be made of the amount of the 100.5 acquisition adjustment cost applicable to the entire acquisition, in such manner and on such bases as will fairly reflect the relation of the systems so disposed of or retired to the total acquisition.

"No other dispositions proposed: Except as hereinabove set forth in this Revised Statement H, the Company has no plan for the disposition of any other

(Testimony of Will T. Neill.)

or additional amounts which may ultimately be reclassified in Account 100.5 or in Account 107. The Company takes the position and maintains that the amounts recorded in its Electric Plant Account, after making the adjustments to Account 140 and Account 107, above proposed, are fully supported by present plant values equaling or exceeding the total amounts shown in said Electric Plant Account."

Mr. Laing: That is all, Mr. Neill. You say you desire to reserve cross examination?

Mr. Slaff: I should like to reserve cross examination of Mr. Neill until the entire direct has been presented.

Trial Examiner: Is that agreeable, Mr. Laing?

Mr. Laing: Yes.

Trial Examiner: Very well. You may step down.

[486]

ERNEST C. WILLARD

called as a witness on behalf of the Pacific Power & Light Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Laing:

Q. Will you please state your name and place of residence?

A. Ernest C. Willard. I reside in Portland, Oregon, my office address being 619 Corbett Building in this city.

Q. What is your occupation or profession?

(Testimony of Ernest C. Willard.)

A. I am a Consulting Engineer.

Q. Are you a registered professional engineer?

A. Yes. I am registered as a qualified professional engineer in the states of Oregon, Washington, and New York.

Q. With what professional organizations have you been associated?

A. I am a member of the American Society of Civil Engineers and the American Water Works Association. I am a past president of the Oregon Section of the American Society of Civil Engineers. I also was a charter member of the National Association of Cost Accountants.

Q. What, if any, public or quasi-public positions do you hold? [487]

A. I am a member of the Board of Trustees of Pacific University, Forest Grove, Oregon. I am also a member of the Board of Managers of Oregon Institute of Technology and Multnomah College here in Portland. I am the past chairman and a present member of the Sewer Charge Equalization Board of the City of Portland and a member and Vice-President of the City Planning Commission of the City of Portland.

Q. What has been your educational training and professional experience?

A. I attended Worcester Polytechnic Institute in Worcester, Massachusetts and began my engineering work in 1906 with Civil Engineer and Surveyors, Fitchburg and Lowell, Massachusetts. My work consisted of general engineering and survey-

(Testimony of Ernest C. Willard.)

ing including street railway construction and design and construction of water works. From April 1907 to July 1907 I was with the Boston and Albany Railroad on third track construction and general maintenance.

From July 1907 to September 1908 I was with the Metropolitan Park Commission, Boston, Massachusetts. I was in charge of parties on surveying, road, bridge, seawall, dam, and building construction and general river and park improvements.

From September 1908 to October 1910 I was with the Commissioners of Sewerage, Louisville, Kentucky as draftsman, as senior inspector on construction, in charge of field [488] parties upon location and construction work and later as assistant in charge of resident engineer's office, Northwestern Division being in charge of field parties, preparations of estimates, etc.

From January 1911 to March 1911 I was assistant engineer with the Arnold Company, Chicago, Illinois in connection with the valuation of the Seattle Electric Company being in charge of work in connection with the power plant equipment.

From April 1911 to July 1912 I was assistant engineer with Halbert P. Gillette, Chicago, Illinois, and in that capacity worked on various valuations of public utility properties. I was in charge of the valuation of buildings, power plant equipment, steam heat distribution system, and rolling stock of Seattle Electric Company, Seattle, Washington. I was in charge of the valuation of the Everett Railway Light and Water Company, Everett, Washing-

(Testimony of Ernest C. Willard.)

ton, including the railway system, light and power system and water system. I was also in charge of the valuation of the Whatcom County Railway Light and Power Company, Bellingham, Washington, including the railway system, light and power system, and gas system.

From July 1912 to September 1912 I was retained by Fairhaven City Water and Power Company, Bellingham, Washington and the Raymond Light and Water Company, Raymond, Washington, in connection with valuations and rate investigations.

[489]

From September 1912 to July 1913 I was assistant engineer with William J. Hagenah, Chicago, Illinois doing some work in connection with the valuation of Pacific Power & Light Company and in charge of the valuation of the Track and Roadway system of the Portland Railway Light & Power Company, Portland, Oregon.

From July 1913 to July 1916 I was assistant engineer with Henry L. Gray, Seattle, Washington. During this time I was responsible under Mr. Gray's direction for valuations and rate investigations made in connection with the following properties: Tacoma Railway and Power Company, Tacoma, Washington; Pacific Traction Company, Tacoma, Washington; Puget Sound Electric Company, Tacoma, Washington; Kootenai Power Company, Coeur d'Alene, Idaho; Consumers Water Company, Coeur d'Alene, Idaho; Washington Water Power Company, Spokane, Washington; Sandpoint Light

(Testimony of Ernest C. Willard.)

and Water Company, Sandpoint, Idaho; Pacific Power & Light Company, Portland, Oregon; Hydro Electric Company, Hood River, Oregon; Hood River Gas and Electric Company, Hood River, Oregon; Anacortes Water Company, Anacortes, Washington; Northwest Light and Water Company, Wallace, Idaho; Portland Railway Light and Power Company, Portland, Oregon; Pacific Northwest Traction Company, Seattle, Washington; Puget Sound Traction Light and Power Company, Seattle, Washington.

From July 1916 to October 1917 I was in charge of de- [490] signing and installing a perpetual inventory and cost keeping system for the Puget Sound Traction Light and Power Company, Seattle, Washington.

From October 1917 to July 1918 I was assistant engineer with Henry L. Gray in connection with the valuation of the Portland Gas & Coke Company, Portland, Oregon.

From July 1918 to December 1930 I was manager of cost and stores for G. M. Standifer Construction Corporation, Vancouver, Washington. This corporation had construction contracts for approximately \$38,000,000 of cargo ships and tankers. I was in charge of all inspection, traffic, and handling in connection with all raw materials, stores, and supplies, preparation of all estimates and cost accounting.

From December 1920 to January 1921 I was with Henry L. Gray in charge of the valuation of gas properties of the Puget Sound Power and Light

(Testimony of Ernest C. Willard.)

Company at Bellingham, Washintgon and the street railway properties of Puget Sound International Railway and Power Company, Everett, Washington.

Since January 1921 I have been in consulting practice here in Portland. Among other engagements may be mentioned: Investigation of the Pacific Telephone and Telegraph Company for the City of Portland.

Investigation of the Bureau of Water Works for the City of Portland involving valuations, rate studies, installation of the present accounting system and recommendations in re- [491] gard to future construction, operating, accounting, and financial policies.

Investigation and valuation of the properties of the Oregon and Washington Telephone Company, Sunnyside Telephone Company and others in connection with purchases of the properties and bond issues.

Valuation and investigation of the Salem Light & Water Company, Salem, Oregon, for the purpose of purchase.

Valuation and investigation of the Hoquiam Water Company, Hoquiam, Washington in connection with condemnation proceedings.

Dalles Water Company, Dalles, Oregon in connection with the sale of that property.

Portland Gas & Coke Company in connection with valuation, improvement program, rates, utilization of natural gas, etc.

(Testimony of Ernest C. Willard.)

Edward Hines Lumber Company, Burns, Oregon including design and estimated cost of proposed light and power development, power contracts, etc.

Portland Chamber of Commerce, Industrial Reports, Comprehensive Studies of Power Rates, etc.

Northwestern Electric Company valuation of all properties owned in Oregon and Washington.

Pacific Power & Light Company valuation of Properties.

Portland Gas & Coke Company valuation of all properties in Oregon and Washington. [492]

Peoples Water and Gas Company, valuation of water system in Vancouver, Washington for purpose of determining purchase price and also member of the Arbitration Board.

Peoples Water and Gas Company, valuation of water systems in Hillsboro, Marshfield, North Bend, Oregon.

Washington Gas and Electric Company, Consulting Engineer in condemnation proceedings in the Federal Court.

Pacific Power & Light Company in charge of preparation of basic data for determination of the original cost of the entire property.

In addition to these engagements, I also have been retained by financial companies in connection with the determination of the feasibility of water supply projects, power and light projects, etc., for the purpose of financing.

Q. I take it from that, then, that your experience has covered a period of some 35 years of active

(Testimony of Ernest C. Willard.)

contacts with public utility properties of all kinds and knowledge of the methods of their construction and the costs entering into such construction?

A. It has.

Q. And has your experience also embraced the conditions under which public utility properties are maintained and the manner in which portions thereof from time to time would be retired, for one cause or other? A. It has. [493]

Q. What is the approximate aggregate value of the public utility properties which have been appraised by you or under your supervision?

A. Something over \$500,000,000.

Q. And during the period of your residence here in Portland where you have been practicing as a consulting engineer for the past 20 years, have you been familiar with the properties of Pacific Power & Light Company? A. I have.

Q. Mr. Willard, have you made a study of the properties and business of the Pacific Power & Light Company as of any particular date?

A. I have.

Q. As of what date have you made that determination?

A. As of December 31, 1940.

Q. Will you please state what, in your opinion, is the cost of reproduction new, and the cost of reproduction new, less depreciation of the properties of the Pacific Power & Light Company as of December 31, 1940?

Mr. Slaff: Mr. Examiner, at this time I should

(Testimony of Ernest C. Willard.)

like to object to that question and to any further evidence along that line. I don't think, Mr. Examiner, that I need to state that the evidence is immaterial and irrelevant, and I don't think that there need be any exposition of my views on that subject, because I know that all of the counsel are familiar [494] with that, and the Examiner is familiar with that; I think all of us know what everybody else thinks of the value of evidence of fair value of properties as of the present time in a proceeding of this nature.

Trial Examiner: Mr. Laing, the date was December 31, 1940?

Mr. Laing: That is right.

Trial Examiner: What is the relevancy of that, Mr. Laing?

Mr. Laing: The relevancy of the proposed testimony, so far as the Company is concerned, has to do with elements of value that are represented by the balance sheet, showing the assets and liabilities of the Company at the present time; and if the matter of disposition of any of the so-called acquisition adjustment costs is to be considered, we maintain that the value of the Company's property is vitally material to the consideration of that matter, and the evidence is offered with definite relation to that particular point.

Trial Examiner: Is the evidence that you propose to offer through Mr. Willard, Mr. Laing,—does it go back to any of the estimates that have been made in your original cost study?

(Testimony of Ernest C. Willard.)

Mr. Laing: It has no relation to those estimates or determinations whatsoever, except in the sense that it relates to the same property. I mean, it does not undertake to have any definite relation to the original costs or purchase [495] costs, or any other kind of costs; it is a straight presentation of the value of this property as of December 31, 1940, which is the nearest year-end date we have preceding the hearing on this issue, and it is offered in that relation for its bearing on the issue of what disposition, if any, may be considered with respect to any of the adjustment costs.

Trial Examiner: That is the sole purpose of the offer?

Mr. Laing: That is the sole purpose of the offer.

Mr. Foley: I know that all the lawyers present have a complete legal argument,—have a knowledge of the complete legal argument that the utilities advance in connection with the offer of a present fair value, or reproduction value, reproduction less depreciation, and I think the Examiner is fairly familiar with that argument. He sat in the Northwestern case. But as a statement of record, I would like to have the position of the American Power & Light Company on the record, and I will ask my associate to read that statement, as my eyes are very bad.

Mr. Powell: On behalf of the American Power & Light Company, we urge that the testimony offered as to the Company's present cost of reproduction new and of reproduction new less depreciation is

(Testimony of Ernest C. Willard.)

material and relevant evidence in this proceeding, as indicating one of the important criteria of the value of the property of Pacific Power & Light Company inherent in the property of that Company, and therefore ac- [496] cruing to the common stock of the Pacific Power & Light Company, which the American Power & Light Company acquired and now owns. We further urge that the consideration by the Commission of any issue as to disposition of amounts which may be established in Accounts 100.5 or 107 will, if such evidence is not admitted, unlawfully and unconstitutionally prejudice Intervener's rights as stockholder and creditor of Pacific Power & Light Company.

Trial Examiner: The Examiner is not inclined to view the offer of counsel as having any bearing whatsoever on any of the issues that are to be considered here. This proceeding is a proceeding for the determination of original cost of these properties. The fair value, as the Examiner finds the issues, has no bearing at all in the proceeding, and the Examiner, therefore, is inclined to sustain the objection of Commission's counsel to the offer made by Respondents and by the Intervener, American Power & Light.

How long, Mr. Laing, is the statement of Mr. Willard?

Mr. Laing: The offer of proof which I wish to make?

Trial Examiner: Yes. I want to afford you an opportunity to make your record.

(Testimony of Ernest C. Willard.)

Mr. Laing: It will take me about three minutes to read my offer of proof.

Trial Examiner: Very well.

Mr. Laing: I understand, Mr. Examiner, that the objec- [497] tion to Mr. Willard's testimony has been sustained, and Mr. Willard might as well relax or leave the stand.

Trial Examiner: That is correct.

Mr. Laing: I wish to state, Mr. Examiner, that if we were permitted to, we would expect to prove by Mr. Willard, and I now propose and offer to prove by Mr. Willard, that he is thoroughly familiar, by reason of his detailed studies and examinations, with the physical properties of the Company, and with the Company's plant accounts and records; that he has determined the cost of reproduction of all of the property of the Pacific Power & Light Company used and useful in the generation, transmission, and distribution of electric power and energy and in the rendering of water service and steam heat service, including non-utility property, such as the Public Service Building, and Fruitvale Canal and other property, as of December 31, 1940; that such cost of reproduction would be not less than \$37,450,000.00, not including any allowance for going concern value; that such cost of reproduction, less accrued depreciation, would be not less than \$31,750,000.00 as of said date, also without allowance for going value; and that the cost of reproduction new, less accrued depreciation, including a reasonable allowance for,

(Testimony of Ernest C. Willard.)

or recognition of, going concern value would be not less than \$34,750,000.00; that the present level of prices of labor, apparatus, and material which enter into the construction of [498] electric, water, and steam heat utility properties is not lower, but, if anything, is higher at this time than the level of such prices prevailing on December 31, 1940; that Mr. Willard has made detailed studies of the depreciation existing in the property of the Company and such studies have included (a) field examinations of such properties by Mr. Willard himself; (b) studies of the age and expected life of various classes of property based upon the Company's records and other reliable sources; (c) consideration of deferred maintenance with respect to various items of property; (d) analysis of expenditures made for replacement and maintenance for the purpose of determining the extent to which depreciation had been compensated by such expenditures; and (e) surveys of the entire property to determine the extent of the obsolescence and inadequacy therein if any; and that finally, we are prepared to proceed with the presentation of the studies, methods, and findings used by Mr. Willard in developing the reproduction cost of the property as of the date indicated, and that a specific and detailed offer of proof would necessarily be as voluminous as would be the testimony of Mr. Willard himself.

That offer, I take it, is rejected, Mr. Examiner.

(Testimony of Ernest C. Willard.)

Trial Examiner: That is correct, Mr. Laing, for the reasons the Examiner has already stated.

Mr. Laing: That finishes our direct testimony, Mr. Examiner. [499]

Trial Examiner: Do you have some direct testimony to offer, Mr. Foley?

Mr. Foley: I don't expect to have any direct testimony, subject to the disposition, however, of the Priest Rapids testimony.

Trial Examiner: I did not understand you, Mr. Foley.

Mr. Foley: I say, subject to the disposition you make of the Priest Rapids testimony, I would like to reserve the right, depending upon how you dispose of that, to introduce evidence along that line.

[500]

WILL T. NEILL

called as a witness on behalf of the Pacific Power & Light Company, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination

By Mr. Slaff:

Q. Mr. Neill, you had discussed, both in your testimony at the resumed hearing and during the course of your testimony at the first hearing held last year, the work of your staff in connection with the reclassification study which you originally filed and which is now Exhibit 15 in this proceeding, and the revised study, which is now Exhibit 17 in this

(Testimony of Will T. Neill.)

proceeding. I should like to discuss with you for a brief while the other side of the picture.

The Federal Power Commission examiners came here in connection with the original study, which is Exhibit 15, in the early part of July, 1940, did they not? [505]

A. I don't know the exact date, but it was a short time after our first filing.

Q. And the chief examiner in charge of the Commission's work at that time was Mr. O'Neil?

A. That is correct.

Q. You had known Mr. O'Neil before, when he was here in connection with his work on the Northwestern Electric Company reclassification; is that not so?

A. That is right.

Q. And as I recollect, Mr. O'Neil was here until about September of 1940 with his staff and then was succeeded by Mr. Flynn; is that right?

A. That is correct. I don't know the exact date, but Mr. Flynn succeeded Mr. O'Neil.

Q. And Mr. Flynn remained in charge of the work here on behalf of the Federal Power Commission until the field work was completed sometime in the early part of 1941, as I recall; is that correct?

A. That is correct.

Q. Now, in charge of the entire work, of course, was Mr. Van Scoyoc; that is correct, is it not?

A. I understand that Mr. Van Scoyoc has charge of this particular kind of work.

Q. You have, as a matter of fact, had discussions

(Testimony of Will T. Neill.)

with Mr. Van Scoyoc about various phases of the work from [506] time to time. A. I have.

Q. And, of course, in the regular routine of the work that was done by the staff here in the field under the direct charge of Mr. O'Neil and Mr. Flynn, you had occasion to have very regular discussions from time to time with Messrs. O'Neil and Flynn in connection with their phases of the work?

A. Yes. I had discussions with them, and also some of my staff had discussions with them.

Q. And I take it that they discussed with you the problems as they saw them in checking your studies equally as frankly as you discussed your problems with them? A. I believe so, yes.

Q. In other words, the action by the staff in checking your studies, as far as you have been able to observe, was not certainly any arbitrary action, was it? A. Oh, I think not.

Q. Although they may have differed with you on specific matters, specific problems, that came up from time to time, those differences, you would say, were reasonable differences arising from varying interpretations of the system of accounts; is that right?

A. That is right; varying interpretation of the system of accounts and probably varying opinions as to how to handle some of the details. Of course, there are always differences [507] of opinion there; but they were very cooperative in an endeavor to work out this base study, which we accomplished,

(Testimony of Will T. Neill.)

finally, on almost complete agreement on the original costs.

Q. The attempt on their part, as well as on yours, as you view it, was an endeavor to bring about by your company, in a final study which it might file with the Commission, the maximum degree of compliance with the system of accounts?

A. That is correct.

Q. And the study which you have filed now,—the revised study, Exhibit 17,—reflects, does it not, the changes which have come about in your interpretation of the system of accounts, and perhaps one might even say approach to certain portions of the system of accounts?

A. I think that is correct.

Q. Would it be a fair statement to say that today, as a result of the studies you have made, which culminated in the filing of your Exhibit 17 in this proceeding, the books of the Company, or the balance sheet of the Company as of 12/31/36, was more informative than it was before you began the reclassification of accounts pursuant to the Federal Power Commission's System of Accounts?

A. I don't think I understand that question with respect to the books and the balance sheet being more informative. Are you referring now to Exhibit 17?

Q. Yes. Take your balance sheet as shown in Exhibit [508] 17, Statement G, I believe it is: That is a more informative balance sheet, is it not, than the balance sheet that you had at 12/31/36,

(Testimony of Will T. Neill.)

before you started reclassification; is that not a fair statement?

A. With respect to the new system of accounts, the balance sheet in Exhibit 17, of course, shows the reclassification of property, and in that extent, of course, tied in with the reclassification of property, it certainly is more informative than the balance sheet of December 31, '36, prior to reclassification, if that is the point that you were making.

Q. Well, not quite. I appreciate your answer, but that is not quite the point I have in mind, Mr. Neill. Let me, perhaps, put it somewhat differently: A person seeking information from your balance sheet today can get a better picture of the facts in back of the balance sheet than he could at 12/31/36, before you began reclassification, from looking at your balance sheet as it then existed? Isn't that a reasonably fair statement?

A. To the extent that the new balance sheet, based on the reclassification, divided certain items up into subdivisions; that is correct. And I might add to that, there is another item, also, to the extent to which it is out as discount and expense, there is a greater subdivision of the things that were on the balance sheet before. [509]

Q. As a matter of fact, I should judge, and will you tell me whether it is so, that today you,—when I say “you” I mean the Company—know more about those property accounts than you did before you began reclassification studies?

A. Absolutely.

(Testimony of Will T. Neill.)

Q. And to that extent the reclassification studies which you have made have been helpful to the Company itself? A. No doubt about it.

Q. And that applies equally, does it not, to the security holders of your Company and to the regulatory agencies which have duties in connection with your Company and to potential investors of securities of your Company?

A. I think that is probably true, taken in connection with the new regulations under which we are working, and altogether there is more information available as a result of these studies; there is no doubt about that.

Q. Now, looking at the Uniform System of Accounts of the Commission as a whole, would you say that that system is arbitrary or outrageous?

A. Well, it is a sort of a new device; it contains some things that we do not agree with, of course; we all do not agree upon it.

Q. I want you to assume or accept as a fundamental premise that there might be differences in the way you would approach the problem as compared with anyone else, of course. [510]

A. Personally I would not use the term "outrageous", although I might not agree with some of the things in the reclassification.

Q. Let us look at the term "arbitrary". Would you call the Uniform System of Accounts an arbitrary requirement of the Commission?

A. Well, there are certain aspects of the classification with respect to recorded costs as costs to

(Testimony of Will T. Neill.)

the persons who originally dedicated the property to public service which are new and unusual; some of those things, at times, would appear to me to be somewhat arbitrary. Of course, as a general rule, we have the classification and we are trying to conform to it.

Q. Had you completed your sentence?

A. Yes, I believe so.

Q. Let us look for a minute at this position with respect to recording costs to the persons first devoting the property to utility service. You recognize, do you not, Mr. Neill, looking at the history of the utility industry, the reasonable necessity for such a requirement?

A. Well, I can see some necessity for getting more information as to the history of such transactions. Does that answer your question?

Q. Without going into the whole panorama of the Federal Trade Commission investigation, I think you will [511] agree with me, will you not, that this investigation disclosed a broad area of abuse that had existed in the utility industry?

A. Well, as to that I can only say,—I am not admitting there was a general abuse throughout the industry,—I do think that the reclassification probably is, or will clear up some of those things that were disclosed in the Federal Trade Commission investigation. Everything is out in the open where everybody can see it.

Q. And where it ought to be; isn't that so?

(Testimony of Will T. Neill.)

A. I think so, yes.

Q. And one of those things that ought to be out in the open where everyone can see it is whether or not the cost of the public utility to the person first devoting it to the service of the public is disclosed; rather, it is one of those things,—

A. (interposing) At least, I can see there can be no harm in disclosing that; it might be beneficial.

Q. And that requirement of the System of Accounts from your point of view, is perhaps one of the most onerous requirements of the whole system?

A. Well, as I said before, it was rather unusual and, we thought, perhaps it was a little bit arbitrary; but, on the other hand, so far as developing that information is concerned, as I said, it can do no harm, and perhaps can do some benefit; it caused us a great deal of work and we spent a great deal of [512] money getting a start on it.

Q. The reason I put the last question just the way I did is because I don't want to discuss with you all the various requirements, and I thought if we could agree, from your point of view, that this requirement of studying cost and cost to the person first devoting it to the public use was one of the most difficult and burdensome in the system, and we could agree that that was not an arbitrary requirement, but one that had reasonable common sense back of it, then we would not have to go through the rest of the requirements one by one. Now, is it a fair statement, Mr. Neill, that from your point

(Testimony of Will T. Neill.)

of view, that is perhaps one of the most difficult of the whole system?

A. Yes; that was, to get the thing reclassified on that basis. May I add to that?

Q. Surely.

A. That probably was not the most difficult so far as getting reclassification—just strike the last part of the answer. I will let it stand at that.

Q. Now, looking again at the System of Accounts broadly, you would not say that that system was entirely at odds with the correct principles of accounting, would you?

A. I don't think I can answer that question; I don't profess to be an expert accountant, and I don't feel qualified to answer that.

Q. You are a pretty good working one? [513]

A. Well, but I am not familiar with all the accounting theory. I am not sufficiently qualified to take up the principles of accounting; that is a little beyond my scope.

Q. But from the point of view of an operating man who has to have a good familiarity with basic principles of accounting to know whether he is running his business soundly or not, would you say that the System of Accounts was at odds with the correct principles of accounting, as you know them?

A. Within the limits and needs of the man who is handling the accounts and analyzing the accounts, I should say that the system is workable. There are a few things in it that could be improved, from my point of view.

(Testimony of Will T. Neill.)

Q. And to complete the answer, if I may suggest it, the system, from your point of view, is not at odds with the principles of accounting, as you know them?

A. Well, the principles of accounting as applied to the problems that the operating people have to deal with, it certainly is not at odds; it is workable; and, fundamentally, as to that part of the reclassification which those men have to deal with, it is not very much different from what we had before.

Q. It is certainly not the expression of a whim on the part of the Commission, but rather the exercise of its judgment?

A. Well, if I can limit my answer to exclude the [514] general principles of accounting—since I don't profess to be an accountant and could not pass on that—and limiting my answer to the ordinary use of the classification for the ordinary operating properties with which I am familiar, it is not at odds with those principles. [515]

Q. For example, going into another phase of this general problem, you testified that from time to time you and the staff had differences of opinion,—differences of interpretation. As I understand it, one of the remaining differences of interpretation between you and the staff members is whether the difference between the amount paid in 1910 by American for the properties acquired and the amount established on the books of the Pacific on those properties when they came over to the Pacific, should be established in Account 100.5 or Account 107;

(Testimony of Will T. Neill.)

that is one of the remaining differences of opinion between you and the members of the staff, is it not?

A. I believe that is one of the principal remaining differences.

Q. Now, let me ask you, Mr. Neill, whether, in your own judgment, such a difference is not a reasonable difference of opinion that reasonable men, looking at the problem, can have?

A. I think so, yes.

Q. That is to say, the staff, when they look at the system of accounts and say that difference between cost to American and the amount established on the Pacific books, that difference ought to go into Account 107 instead of 100.5 they are not being just high-handed or arbitrary, but rather giving an expression to what they consider to be a reasonable interpretation of the System of Accounts, from their point of [516] view? Would you say that is a fair statement?

A. I would say that is true.

Q. Now, originally when you filed your first report of your study, which is now marked as Exhibit 15, you stated that you could not determine the original cost in the acquisition adjustments, acquisition by acquisition; is that correct?

A. Yes. I think I testified that when we filed the statement we had not been able to formulate a method to determine the original cost of the several acquisitions, at the time of acquisition, with what we thought would be sufficient accuracy; we had determined the original cost as of December 31, 1936, with what we considered was a rather high degree

(Testimony of Will T. Neill.)

of accuracy; that is, the original cost of the property as it existed in December, 1936. Our difficulty was in formulating some method for determining the original costs at the time of acquisition, for the several acquisitions, which could be tied into the more accurate determination as of December 31, 1936.

Q. Was that, in part, due to the fact that your records as to the original costs of the properties, acquisition by acquisition, were incomplete, in many cases?

A. It was due to the fact that the records of the predecessor companies were incomplete, and also to the fact that the records of the properties,—such records that were available of the properties,—on the books of the Pacific Company were incomplete; that is, we didn't know what the [517] cost of the property was at the time of acquisition, in many cases, and it did not seem possible to get the original cost at the time of acquisition so that we could verify the original cost, acquisition by acquisition.

Q. Subsequently during the ensuing years, you continued your study to determine the original costs, acquisition by acquisition, and did ultimately determine that cost, and that cost is reflected in Exhibit 17?

A. Yes.

Q. Have you anything to add?

A. Yes. Prior to the filing of Exhibit 15, July 3, 1940, of course we had done some work on determining original costs. After filing the exhibit, we took the work up anew and carried it to completion, and it is shown in Exhibit 17, our Revised Statement.

(Testimony of Will T. Neill.)

Q. So far as you are concerned, the job which you have now done and the determination which you have now made with respect to original costs, acquisition by acquisition, is a sound job and a satisfactory determination?

A. I think the job is sound. Of course, in determining original cost at the time of acquisition, as shown in Exhibit 17, we had to use what records were available from the best information we could get; and I would say that the revised costs, estimated as of the time of acquisition, are the best that we can do; I couldn't swear they are absolutely correct; but, using those, and tying them in, as we can, to the more accurately determined original cost of the properties as they existed December 31, 1936, in my opinion, it makes a pretty good job of it. [519]

By Mr. Slaff:

Q. As far as you know, are your records in any better shape, generally, with respect to acquisitions than sister companies—other companies in the Bond and Share System—with which you may be familiar?

A. I am not familiar with any of the other companies; so I would not care to say—I really can't say. I don't know anything about the records of the other companies; so I really can't say whether they are or are not.

Q. But, anyway, then to sum up that particular phase of your work, you had a tough job on your hands from several points of view, including the incompleteness of the record; but you went ahead

(Testimony of Will T. Neill.)

and did it and arrived at what you feel to be a reasonably satisfactory answer; is that not so?

A. Yes, I think so. The reason that we have a satisfactory answer, of course, has come out of the method which we followed in determining the original cost of the property as it existed on December 31, 1936 on what I considered to be the most accurate way of determining that—that is, on the basis of pricing out the inventory. Having that, the inaccuracies that may appear in our determination of the original cost at time of acquisition, can be washed out through the reconciling adjustment that we discuss on page 47 of Exhibit 17; but in my opinion, the job is a satisfactory one. [520]

Q. Now, turning to another phase of the problem, Mr. Neill, is it a fair statement that at July, 1910, at the time of the transfer of the original acquisitions from American to Pacific, that Pacific was merely an incorporated department of American?

A. Well, I would not say that it was an incorporated department. The American Power & Light Company created Pacific, of course. I don't think you would call it an incorporated department; it was a separate company.

Q. Well, are Inland and Pacific separate companies?

A. Well, Inland and Pacific are separate corporations, yes.

Q. And Inland, in your view, is merely an incorporated department of the Pacific; is not that right?

(Testimony of Will T. Neill.)

A. Inland Company is operating, I think I have testified before, as really in effect a separate department of Pacific.

Q. Sure, and that is the reason why I have used the term an incorporated department, Mr. Neill, because you used that term to characterize the relationship between Inland and Pacific in your testimony before the Federal Power Commission; that is to say, you referred to Inland as an incorporated department of Pacific. You recollect that, do you not?

A. Oh, yes, that is right.

Q. Now, I am confining myself now, and I think I did [521] in the question I first put to you in this regard, to the time at July, 1910, at the time of the transfer of the properties to Pacific, and I ask you whether it is not a fair statement to say that at that time Pacific was nothing more than an incorporated department of American?

A. I don't think I can answer as well on that question as I can on the Inland situation. All that I knew about the 1910 situation is that the American Company, as I said before, created Pacific, and American—that is, after having assembled certain properties for operation by Pacific, Pacific Power & Light Company purchased those properties from American and began its career as a separate company. So far as I am familiar with the Pacific operations since I have been connected with the organization, there isn't the same situation as between Pacific and American as there is between Pacific and Inland, whose properties are more or less tied to-

(Testimony of Will T. Neill.)

gether; and, as a matter of ordinary operating convenience, are operated more or less as one institution.

Q. Well, that, Mr. Neill, is why, as I have said, I confined this question, in the first instance, to the period just at July, 1910, when American caused the transfer of the properties to Pacific, and I want subsequently to discuss with you the relationship that has existed after that time; but just confining ourselves to the time of transfer, would it be fair, again—would it be fair to characterize [522] Pacific at that time as an incorporated department of American?

A. I don't look at it in that light, as an incorporated department any more than in all normal cases where the controlling stockholder—that is, if there is a controlling stockholder in a corporation, such as there is in American and Pacific.

Q. Well, at the time of transfer of the properties to Pacific, all the securities of Pacific went over to American, did they not?

A. That is correct. The Pacific purchased the properties which it obtained in the 1910 acquisition from American, and gave in return certain securities.

Q. At the time of creation of the Pacific and transfer of the properties to Pacific in 1910, no one, other than American, had any form of interest in Pacific; isn't that right?

A. I believe that is right.

Trial Examiner: Was American an operating company at that time, Mr. Neill?

(Testimony of Will T. Neill.)

The Witness: I don't know. I think American was an operating company; but I can't say.

Mr. Laing: I don't think, Mr. Examiner, that American was ever an operating utility company. My recollection is that American's operations were exclusively through subsidiaries in one form or another.

Mr. Slaff: Well, there seems to be some difference [523] with respect to that, but we can resolve that and determine that, and I think we will arrange to have some mention of that fact in the record, Mr. Examiner, at some other time.

By Mr. Slaff:

Q. Now, subsequently, American disposed of the securities, other than the common stock, isn't that right? A. Yes, I believe so.

Q. American, however, retained all their common stock, except directors qualifying shares?

A. That is correct.

Q. And has so retained all the common stock down to date; is that right? A. That is correct.

Q. Now, since the inception of Pacific, American has continued to control Pacific; is that right?

A. They have always owned the stock control.

Q. Well, is it a fact that, speaking broadly,—and if you don't want to, you can narrow it down as you just have—speaking broadly, Pacific has, since 1910, controlled—American has, since 1910, controlled Pacific?

A. I think the stock control, which they have had,

(Testimony of Will T. Neill.)

gives them control. I didn't mean to—I thought my first answer was sufficient. [524]

Q. Is it a fact that no determination of major policy is made by Pacific without the acquiescence of American?

A. Well, so far as my experience has gone,—I have been with the Company since 1921,—and the policies of Pacific, as far as I know, have been formulated locally by the Company's officers.

Q. Of course, assuming that to be so, those formulations are subject, and always have been subject, to approval by American?

A. Well, not to my knowledge. As I say, as far as my experience with the Company has been, the officers of the Company have formulated the policies governing the Company's operations and activities. As far as I know, there has been no formulation of those policies by American within my knowledge.

Q. Now, let's go back, then, to the very inception of the Company. Who comprised the first Board of Directors of Pacific, do you know?

A. All that I know about the first Board of Directors is the record contained in the minutes of a meeting of July 23, I believe, appearing in the record as Exhibit 20.

Q. Well, just so that the record can be technically accurate on that point, the directors set out in the minutes of meeting of July 23, 1910, comprised the second Board of Directors of Pacific, did they not?

[525]

(Testimony of Will T. Neill.)

A. I believe that is correct.

Q. The first Board was comprised, was it not, of fifteen named dummies up in the state, without any invidious connotations, were dummies at the time of the incorporation?

A. I saw a list of the first Board of Directors at one time. Of course, I do not know who the men were. There was a Board of Directors, I suppose, the first one at the time of the organization of the Company; but I have no idea of who the men were or where they were from or with whom they were associated.

Q. Now, this second Board, whose names appear in Exhibit No. 20, do you know who they were?

A. I don't know the men. I understand, however, that that second Board largely was composed of staff members or officers of American Company, or Electric Bond & Share.

Q. Or members or employees of the firm of Simpson, Thatcher & Bartlett?

A. I believe so.

Q. For the purposes of the record, Simpson, Thatcher & Bartlett were counsel for Electric Bond & Share and American, were they not?

A. I believe so.

Q. Now, I call your attention, Mr. Neill, to a copy of a letter under date of July 23, 1910, and ask you whether or not this is a copy of a letter in the files of the Pacific [526] Power & Light Company (counsel handing a paper to the witness).

Mr. Laing: Mr. Slaff, I have not seen the letter before, but if someone says they found it in the files,

(Testimony of Will T. Neill.)

I am willing to concede that it may have been taken from the files.

Mr. Slaff: Oh, sure. If Mr. Neill does not recognize it now, I want him to check it.

The Witness:: I have never seen this letter. It may have come from the files. I have never seen it, or a copy of it.

Mr. Slaff: I should like to have a copy of this document, Mr. Examiner, marked for identification with the next exhibit number.

Trial Examiner: It will be marked for identification as Exhibit No. 22.

(The Document Referred to Was Marked Exhibit No. 22 for Identification.)

By Mr. Slaff:

Q. July 23, 1910, Mr. Neill, was the date of the Board meeting, the minutes of which are contained in Exhibit No. 20; is that right?

A. That is correct.

Q. Who was Mr. Guy W. Talbot, at this time?

A. He appears in this letter as a man who had been elected to the vice-presidency of the Pacific Power & Light Company.

Q. Can you give us a little more information about [527] Mr. Talbot?

A. You said at that time. Mr. Talbot was, until, oh, perhaps,—I have forgot just the year,—six or seven years ago, or maybe a little less, was president of the Pacific Power & Light Company.

Q. Who was the first president of the Pacific Power & Light Company; do you know?

(Testimony of Will T. Neill.)

A. No, I do not.

Q. You can check that, I take it, for us.

Mr. Laing: We will concede, Mr. Slaff, that Mr. Talbot was president of the Pacific Power & Light Company from at least the 1st of August, 1910, down to February of 1933, when he resigned.

Mr. Slaff: That was my impression, Mr. Laing, only I had simply assumed that he had been elected president right at the outset, and I discovered——

Mr. Laing: I think within a week after the date of this letter, he was president of the Company, I am quite sure.

Mr. Slaff: All right.

By Mr. Slaff:

Q. Now, who was Mr. S. Z. Mitchell?

A. Apparently, from this letter, he was Chairman of the Board of the American Power & Light Company.

Q. You don't have any doubts about that, do you?

A. No, I don't know what,—this is the only know- [528] ledge I have of what his position was at that time, because otherwise I don't know. I assume because he signed himself on here as Chairman of the Board, that he probably was Chairman of the Board of the American Power & Light Company.

Q. What was Mr. Mitchell's connection with Electric Bond & Share Company?

A. I can't say of my own knowledge. He undoubtedly probably was an officer, or he may have been president; but I don't know.

(Testimony of Will T. Neill.)

Q. You have certain knowledge, don't you, Mr. Neill, which you acquired in the course of your studies as to the positions or relationship of a man like Mr. Mitchell, to assist you?

A. Well, I have known of Mr. Mitchell, of course, for a good many years; but I can't say exactly what his relationship was to Electric Bond & Share, or American Power & Light Company, as to the position which he held.

Mr. Laing: We are willing to concede, Mr. Slaff, that Mr. Mitchell was the leading factor, whatever office he held, in the Electric Bond & Share Company at that time.

Mr. Slaff: Well, that, essentially, is all I was interested in.

By Mr. Slaff:

Q. And Electric Bond & Share was the parent of the American Power & Light Company; isn't that right? [529]

A. I don't think I can answer that question, because of lack of knowledge, as to the exact relationship between American and Electric Bond & Share.

Q. Well, Mr. Neill, you have investigated that relationship in the course of your preparation of your original costs and reclassification, have you not?

A. Not the relationship between Electric Bond & Share and American.

Q. Well, did it interest you at all, in the studies that you made, to determine whether there was any

(Testimony of Will T. Neill.)

affiliated relationship between those two companies?

A. It did not occur to me that it was necessary, to get this reclassification study completed. I made no endeavor to find out what relationship there may have been between American and Electric Bond & Share.

Q. You have been with this system about twenty years, or more, is that right?

A. I have been with this system since 1921, in various capacities.

Q. Prior to that time, you had had regulatory experience, or experience with the regulatory commission here in this state?

A. Yes. I had been about six years in the Public Service Commission of Oregon.

Q. And have you at any time during that time had any [530] doubt that the Electric Bond & Share was the parent of American Power & Light?

A. Well, I have always known that there was an affiliation there. The term "parent," of course, is a little foreign to my vocabulary in that particular connection; but we know now and we have always known,—or, I have known,—that there was an affiliation there, and there still is.

Q. Now, directing your attention to Exhibit 22, in the first paragraph there is a statement that Messrs. Simpson, Thatcher & Bartlett are writing Mr. Weathers fully today regarding the transfer of the various local companies. Who was Mr. Weathers?

Mr. Laing: If Mr. Neill doesn't know, I can

(Testimony of Will T. Neill.)

contribute that information, because I happened to know Mr. Weathers very well. He was a member of the firm of Simpson, Thatcher & Bartlett, and he was out here in Oregon at the time assisting in putting these properties together. He was either a member of the firm, or what they called a clerk in the office of Simpson, Thatcher & Bartlett at that time.

By Mr. Slaff:

Q. Now, with respect to the gentlemen named in the second paragraph in which Mr. Mitchell tells Mr. Talbot who had been elected to certain offices, were they local people here in Oregon whom you knew as operating officers of the Company? [531]

A. Yes. Those were all local people; at least, with the possible exception of Mr. Nevins. I knew Mr. Nevins a long time before his death. Of course, I don't know what his origin was; I can't say, but Mr. Cookingham who was elected as vice-president, and Mr. McArthur, were local men, and I believe Mr. Nevins was; but I can't say for certain.

Q. By the way, is Mr. Talbot still alive?

A. He is.

Q. And Mr. Cookingham?

A. Mr. Cookingham is still alive and is still vice-president of the Company.

Q. And Mr. McArthur? A. Yes, sir.

Q. Mr. Talbot is still a director of the Pacific Company? A. He is.

Q. Now, I would like to have you read into the record at this point the fourth paragraph of that

(Testimony of Will T. Neill.)

letter, beginning towards the bottom of the first page, if you will.

A. A letter at the bottom of page,—or, rather, the paragraph at the bottom of the first page of Exhibit 22 reads as follows: (Reading)

“While we have elected the foregoing as officers in the West we have not as yet elected any Western directors because we want to keep the full Board here until we get through with [532] all the votes relating to the issuance of bonds, stocks, etc. When this is all finished we will elect the permanent Board, a majority of which will be in the West and an Executive Committee the majority of which will be here.”

Do you wish me to read on with the——

Q. No, thank you.

Mr. Slaff: I would like to offer this letter in evidence, Mr. Examiner, and, certainly subject to any check which counsel may later wish to make with respect to the letter.

Mr. Laing: I have no objection to its being offered in evidence.

Trial Examiner: Exhibit 22 will be received.

(Exhibit No. 22 was received in evidence.)

Mr. Laing: Subject to checking it as to accuracy after copying.

Trial Examiner: Yes. That reservation will be made, Mr. Laing.

By Mr. Slaff:

Q. Now, I call your attention, Mr. Neill, to what

(Testimony of Will T. Neill.)

purports to be a copy of a telegram,—night letter,—sent by Mr. F. G. Sykes to Mr. Guy W. Talbot, under date of December 16, 1911 (counsel handing a paper to the witness). Who was Mr. F. G. Sykes at this time; that is, at 1911?

A. Mr. Sykes was, as far as I know, a New York man; I don't know of my own information what position he held. [533]

Q. Would it help refresh your recollection if I tell you that my information is that he was president of American from about 1909 to about 1920?

A. I know he had some connection in New York, probably with American, but I——

Mr. Laing: (Interposing) I think we will concede that statement, Mr. Slaff. I think he was also, for a period of time, a director and probably also an officer of some kind in Pacific Power & Light Company; but I couldn't tell you without checking that. I know he was a director of the Pacific Power & Light Company, and he was president of the American Power & Light Company. [534]

Mr. Slaff: I should like to have this document, which is a night letter—a Western Union night letter—from F. G. Sykes to Guy W. Talbot, Pacific Power & Light Company, dated at New York December 16, 1911, marked for identification.

Trial Examiner: It will be marked for identification as Exhibit 23.

(The document referred to was marked Exhibit No. 23 for identification.)

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. That telegram deals, does it not, with the proposed increase of the Pacific Power & Light preferred stock and making provision for an issue of second preferred; does it not?

A. I believe so.

Q. Now, looking at that telegram, where would you say the decision to increase the Pacific Power & Light Company preferred and the issuance of a second preferred originated?

A. Well, I don't think I can tell from this telegram. It apparently was, that is, the decision to make the stock changes may have resulted from previous discussions. Whether the plans for the changes originated with Mr. Sykes, I don't think I could presume to say, from this telegram.

Q. But regardless of where the plans may have originated, where did the final determination to increase the preferred stock and issue the second preferred come from? [535]

A. Ordinarily that probably would come from the Board of Directors.

Q. Well now, who told the Board of Directors?

A. I can't say.

Q. In this case—I am quite serious about this, and looking at the telegram—have you read the telegram?

A. I have read the telegram, yes.

Mr. Laing: The telegram is about calling a Directors' meeting.

Mr. Slaff: That is right.

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. Certainly there is no question about the final act of authorizing the issuance of the securities being done by the Board of Directors. There is no doubt about that, certainly, in my own mind, and I don't think there is in yours?

A. That is right.

Trial Examiner: The Board of Directors of the Pacific?

Mr. Slaff: Yes, the Board of Directors of the Pacific.

By Mr. Slaff:

Q. Now, looking at this thing as a practical matter, can you tell us on this record who decided actually that this preferred stock was to be increased and that there was to be an issue of a second preferred, as between the American and the Pacific? [536]

A. Well, this telegram apparently contains the suggestions of Mr. Sykes to Mr. Talbot to do certain things. Of course, I don't know what the preliminary arrangements or discussions may have been. Frequently, in the later days, or today, these things are discussed before they are finally consummated.

Q. That is why I put to you the question as I did. Leaving aside the preliminary discussion which may have been had, what I am asking you is, as a practical man, where the ultimate decision as to the issuance of this stock was made as between the American and the Pacific.

(Testimony of Will T. Neill.)

A. Well, I am trying to answer your question.

Q. Surely.

A. About all I can say about that is that this telegram contains suggestions or instructions to Mr. Talbot to make certain arrangements. Whether Mr. Sykes made the determination as to what was going to be done, I really am not able to answer, because I don't really know.

Mr. Laing: I suggest that the telegram speaks for itself. It is hardly reasonable to ask the witness to attempt to interpret a message which passed between two people 30 years ago beyond what is expressed on the telegram itself.

Mr. Slaff: Of course, I always find that where a document is supposed to speak for itself, when I come to submit a brief it speaks in one language, and it speaks in another [537] language to counsel. That is quite reasonable to assume. What I am interested in getting into this record is how it speaks to him, because, unfortunately, neither I nor counsel are under oath and, consequently, we may have varied interpretations; and I think I am entitled to pursue with Mr. Neill what this telegram means to him.

Mr. Laing: I do not like to take issue on a relatively unimportant point with counsel, but it strikes me as to what Mr. Neill's opinion of what that message might mean is rather irrelevant and immaterial.

Trial Examiner: I am rather inclined to agree with you, Mr. Laing. Of course, Mr. Slaff, the wit-

(Testimony of Will T. Neill.)

ness can be explored as to knowledge that he has of the situation, but I believe he has testified that he has no knowledge other than what this telegram might indicate to him; and I think perhaps the interpretation of the telegram could probably be entrusted to the Commission. I presume that it is your intention to offer the telegram?

Mr. Slaff: Yes.

Mr. Laing: I have no objection to the telegram being offered in evidence, subject to its being checked for accuracy as to copy.

Mr. Slaff: All right. I have no objection. I will offer this document which has been marked as Exhibit 23 for identification. [538]

Trial Examiner: Very well. Under the reservation that the telegram may be checked for accuracy, Exhibit 23 will be received.

(Exhibit No. 23 received in evidence.)

By Mr. Slaff:

Q. Now, do you know whether the action mentioned in this Exhibit 23 for identification was taken by the Board of the Pacific Power & Light Company? A. I do not.

Q. I call your attention to what purports to be a copy of the minutes of the special meeting of the Board of Directors of the Pacific Power & Light Company held on December 22, 1911, and I ask you whether or not the action set out in the telegram, Exhibit 23, was taken by the Board.

Mr. Slaff: I am sorry I don't have additional copies. That must have been one of your early Board meetings, Mr. Laing?

(Testimony of Will T. Neill.)

Mr. Laing: Well, I was there at the time. Those minutes indicate that Mr. Sykes was a director of the Pacific Power & Light at that time, also.

Trial Examiner: I didn't hear that.

Mr. Laing: I say, those minutes indicate also that Mr. Sykes was a director of the Pacific Power & Light Company at that time.

Mr. Slaff: Well, while we are matching directors, [539] I have just been informed that Mr. Talbot was a director of the American—subject to check, of course. A vice-president, I am advised.

A. The minutes of the Pacific Power & Light Company Board of Directors' meeting indicate that this action was taken, with reference to this matter, on December 22, 1911.

Mr. Slaff: I should like to have the copy of the minutes of the Board of Directors of the Pacific Power & Light Company, held on Friday, December 22, 1911, or, rather, an excerpt from those minutes, being a seven-page document which is taken from those minutes, marked for identification and received in evidence, subject to check by the Company as to the accuracy of that portion of the minutes. I regret I do not have additional copies now, but I will furnish them in a few days.

Trial Examiner: It will be marked for identification as Exhibit 24. Is there any objection to the offer?

Mr. Laing: I have no objection to it. It may be offered in evidence directly, so far as I am concerned.

(Testimony of Will T. Neill.)

Mr. Slaff: Yes. We offer it directly; I would like to have it marked for identification and I will offer it directly in evidence.

Trial Examiner: What is the date?

Mr. Slaff: December 22, 1911.

(The document referred to was marked Exhibit No. 24 and received in evidence.) [540]

Trial Examiner: We will take a short recess.

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

Trial Examiner: The hearing will be in order.

By Mr. Slaff:

Q. Mr. Neill, Mr. Laing asked me to request you to read into the record at this point the Directors of the Pacific Power & Light Company at that time, and to ask you to identify them if you can, which I am glad to have you do.

A. The list of Directors shown on Exhibit 24 as being present at this meeting, held December 22, 1911, contains the following: Mr. J. C. Ainsworth, a Portland man; C. Hunt Lewis, who, I believe, also was a local man; H. C. Lucas, Yakima, Washington; Edward Cookingham, a Portland man; Philip Buehner, who, I believe, also was a local man; Miles C. Moore, an ex-Governor of the State of Washington, whose home was at Walla Walla, Washington; Guy W. Talbot, a Portland man; S. S. Gordon, who was, as I remember, a banker in Astoria, Oregon; John A. Laing, who is with us today. The minutes also show that the following

(Testimony of Will T. Neill.)

Directors were absent: F. L. Dame, who was a New York man; S. Z. Mitchell, a New York man; Fred S. Fogg, a local man.

Mr. Laing: Mr. Fogg actually lived in Tacoma.

The Witness: I am speaking of locally; as in the northwest, in this territory. [541]

The minutes also show as being absent: William Jones, also a northwest man—I have forgotten just where he lived; F. G. Sykes, a New York man; Josiah Richards, who is at the present time one of our Directors and lives in Spokane, I believe.

By Mr. Slaff:

Q. Now, these people to whom you referred as New York men, were they connected with the American Power & Light Company?

A. I believe so, but I am not certain as to their positions.

Mr. Laing: We will concede that they were so associated, and Mr. Dame, Mr. Mitchell and Mr. Sykes.

By Mr. Slaff:

Q. Who, at this time, comprises the executive committee of the Board of Directors of the Pacific Power & Light Company? A. I don't know.

Q. I will show you what purports to be a copy of the minutes of the meeting of the executive committee of the Pacific Power & Light Company held on December 30, 1911, and ask you whether it appears from there who comprises the executive committee.

A. According to this document, the members of the executive committee who were present at this

(Testimony of Will T. Neill.)

meeting on [542] December 30, 1911, were S. Z. Mitchell, F. G. Sykes, and F. L. Dame.

Q. And where does it appear that that meeting was held?

A. That meeting was held at 71 Broadway, New York. [543]

Q. The address, 71 Broadway, is that where the offices of American and Bond & Share was located?

A. I believe so.

Mr. Slaff: I should like to have that document marked,—a one-page document marked and offered in evidence. I am not interested, Mr. Examiner, in the substance of this particular meeting; but I am offering it merely to show who at that time were the——

Mr. Laing: (Interposing) I think we can save you the bother of encumbering the record with that by admitting that these were three members,—three of the five members of the Executive Committee of the Pacific Power & Light Company's Board of Directors at that time. I can't tell you, for the moment, who the other two were, but I think probably Mr. Talbot and one other man from the West; but I can't remember.

Mr. Slaff: Well, that is thoroughly satisfactory.

Trial Examiner: Very well.

By Mr. Slaff:

Q. And, as a matter of fact, Mr. Neill, as long as the Executive Committee of the Board of Directors of the Pacific Power & Light Company continued in existence, a majority of that Executive

(Testimony of Will T. Neill.)

Committee were so-called New York men, or people back in New York, connected with the American; isn't that right?

A. I am sorry, but I do not know. [544]

Mr. Laing: I can't answer that. We haven't checked that. I really don't know. It seems to me later on there was a change made, but I am not certain about that.

Mr. Slaff: Well, if you will be good enough to check that.

By Mr. Slaff:

Q. I call your attention, Mr. Neill, to the minutes of the regular quarterly meeting of the Board of Directors of the Pacific Power & Light Company held January 14, 1932, which are just about as far as the minutes which I have go, and that indicates, does it not, the five men who were then elected as the Executive Committee of the Board?

A. Yes. This document indicates that at the meeting of the Board of Directors on January 14, 1932 there were nominated and elected as the members of the Executive Committee for the ensuing year: Mr. S. Z. Mitchell, Guy W. Talbot, J. C. Ainsworth, A. S. Grenier, and Frank Silliman, *Mr.*

Q. And of those five men, Messrs. Mitchell, Silliman, and Grenier were American Power & Light people in New York; isn't that so?

A. They were New York people, and I assume they were connected with the American.

Mr. Laing: Either American or Bond & Share. I am not certain about Mr. Grenier being with the American Power & Light Company. [545]

(Testimony of Will T. Neill.)

Mr. Slaff: Mr. Examiner, before proceeding on, might I ask that there be, for convenience, copied into the record, Exhibit 22 and Exhibit 23. Exhibit 22 is the letter of July 23, 1910, an Exhibit which we discussed before the recess, and Exhibit 23 is the telegram of December 16, 1911, which we have been discussing more recently.

Mr. Laing: I have no objection to that.

Trial Examiner: Of course, that cannot be done, Mr. Slaff, inasmuch as we have given those documents an exhibit number. For that reason, it will be necessary that the copies be furnished before the exhibit is filed.

Mr. Slaff: Oh, yes. I don't want to make any changes to their status as exhibits.

Trial Examiner: Very well.

“File 53-B
P.P.&L.Co.—
Organization

“American Power & Light Company
71 Broadway
New York

July 23rd, 1910.

“Guy W. Talbot, Esq.,
Lewis Building,
Portland, Oregon.

Dear Mr. Talbot: [546]

“Messrs Simpson, Thatcher & Bartlett are writing Mr. Weathers fully today regarding the transfer of the various local companies.

(Testimony of Will T. Neill.)

“At a meeting of the Pacific Power & Light Directors here today the following Western officers were elected:

“Guy W. Talbot, Vice-President
Edward Cookingham, “
George F. Nevins, Assistant Treasurer
George F. Nevins, Secretary
L. A. McArthur, Assistant Treasurer
L. A. McArthur, “ Secretary

“We did not elect Mr. Nevins Treasurer because under the laws of the State of Maine the stock certificates must be signed by the Treasurer or the Cashier. Inasmuch as the stock certificates will probably be signed here for the present at least we want to have the Treasurer here, as we do not like to have stock certificates sent out signed ‘Cashier’ as this is more or less unusual and for that reason may cause Comment.

“While we have elected the foregoing as officers in the West we have not as yet elected any Western directors because we want to keep the full Board here until we get through with all the votes relating to the issuance of bonds, stocks, etc. When this is all finished we will elect the permanent Board, a majority of which will be in the West and [547] an Executive Committee the majority of which will be here.

“I have your letter of the 15th as to the signing of checks by the local managers. I have discussed this with Mr. Sykes and he suggests that all the checks be signed at the Portland office ex-

(Testimony of Will T. Neill.)

cept for petty disbursements in the various towns where we do business and that for such petty disbursements each local manager should have a contingent fund against which checks can be drawn by the local cashier and countersigned by the local manager; statement to be made up weekly or monthly as you may desire for such petty disbursements, such statement to be sent to the Portland office and audited there and check for such disbursements as are approved by your office to be forthwith sent to the local manager to reimburse his contingent fund as aforesaid. The amount of such contingent fund you will of course fix to meet the requirements in each case, except in the local offices where considerable freight bills are to be paid and large construction items are to be met a small contingent fund of from say a few hundred dollars up to say one thousand dollars as a maximum should be sufficient, especially in view of the fact that these people can make up a statement every three or four days and send it in to your office if it becomes necessary to quickly replenish the contingent fund.

“I enclose herewith a number of certified copies of resolutions authorizing the signing of checks by the above [548] named officers, to withdraw the funds of the company from the various local depositories.

Very truly yours,

(Signed) S. Z. MITCHELL

Chairman of the Board

SZM/CMH”

(Testimony of Will T. Neill.)

“Western Union Telegraph Company
Night Letter
84 N. Y. SF. 141 N. L.

New York, N. Y. Dec. 16, 1911.

“Guy W. Talbot
Pacific Power & Light Co., Spalding Bldg.,
Portland, Oregon.

“Desire to increase Pacific Power & Light Co. preferred stock and provide for Pacific Power & Light second preferred stock before January first. Please call directors meeting for next Friday afternoon or Saturday morning, as you prefer. Resolutions and waiver of New York directors mailed to you to-night. Stockholders meeting will be held December twenty-ninth. Notice to stockholders in New York books will be mailed from New York office December nineteenth. It will be necessary for you mail notices from Portland on same date to stockholders shown on Portland books. We will wire form of notice to you by night letter December eighteenth but [549] suggest you obtain list of stockholders shown on Portland books on eighteenth to insure mailing notices to them on nineteenth. Pacific Power & Light executive committee meeting will be held here Monday to authorize closing of books at close of business on December eighteenth, books to re-open December thirtieth.

F. G. SYKES”

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. Now, Mr. Neill, I want to call your attention to a copy of either a telegram or a letter from Mr. F. G. Sykes to Mr. Guy W. Talbot, dated New York, December 17, 1913 (Counsel handing a paper to the witness).

Have you had an opportunity to read that, Mr. Neill?

A. Yes, sir.

Mr. Slaff: I should like to offer this document and have it marked as an exhibit, Mr. Examiner.

Trial Examiner: It will be marked for identification as Exhibit No. 25.

(The document referred to was marked Exhibit No. 25 for identification.)

By Mr. Slaff:

Q. Now, that document, Mr. Neill, was a direction, was it not, by American to Pacific to make a certain purchase; i.e., the Vancouver Gas Company? [549-A]

A. Well, it was the expression of a belief, Mr. Sykes felt that the Pacific Company should immediately make arrange- [549-B] ments to purchase the Vancouver property, and suggesting certain procedure to be followed.

Q. Well, have you completed your answer?

A. Yes.

Q. I call your attention, Mr. Neill, to the fact that perhaps it was more than what you would call a suggestion. For example, the sentence about in the middle of the telegram, or letter, "Wire

(Testimony of Will T. Neill.)

rush Thursday date you expect hold this meeting and that you approve this plan.”

Had you noticed that?

A. Yes. Of course, I don't know anything about this transaction. I never have seen the telegram before, and I don't know what was back of it, as I said in respect to the stock transaction, in an earlier exhibit.

Q. Now, it also appears, does it not, that American was very anxious to obtain additional Pacific bonds, and that was the reason for transferring Vancouver to Pacific at that time?

Mr. Laing: Mr. Examiner, again I suggest that the letter and the inferences that are to be drawn from it are matters which this witness has no special competency to discuss, and his opinion about it would be completely immaterial.

Mr. Slaff: As to that, Mr. Examiner, I might suggest that I am merely calling attention to particular points in this telegram which I think are informative for the record. [550] I am merely adopting the procedure, really, that Mr. Laing used in his direct examination of Mr. Neill. Now, he is calling particular attention to particular passages, long passages, many of them, in Exhibit 17, which he felt, and understandingly, quite properly should be included in the record, and that is all I am doing at this time.

Mr. Laing: I was asking Mr. Neill about things that he had done and prepared himself; whereas, this is a document between other parties.

(Testimony of Will T. Neill.)

Mr. Slaff: Mr. Neill didn't have anything to do with, as I recollect, Priest Rapids,—Priest Rapids development. There is no question about that.

Trial Examiner: We will let Mr. Slaff proceed, and I trust that you will do it expeditiously.

Mr. Slaff: Oh, surely.

Mr. Laing: I have no objection to the telegram being copied into the record, if you would like to do that, Mr. Slaff.

Mr. Slaff: In a minute. May we have the last question, Mr. Reporter?

(Whereupon, the reporter read as follows:) Question: Now, it also appears, does it not, that American was very anxious to obtain additional Pacific bonds, and that was the reason for transferring Vancouver to Pacific at that time?"

A. As I say, I don't know anything about the transac- [551] tion. I don't think that follows from the wording of the telegram.

Q. Well, I call your attention, Mr. Neill, to the following:

"After deeding Vancouver to Pacific Company," towards the end of the telegram, "the increased earnings would undoubtedly allow you issue additional Pacific bonds, and we suggest you have engineers start immediately making certificates, and at above mentioned directors' meeting pass necessary resolution, as we very anxious obtain these bonds early in January, this being reason for transferring Vancouver to Pacific Company at this time."

(Testimony of Will T. Neill.)

A. I am sorry; I didn't read far enough. Well, the telegram, in that respect, speaks for itself. As I say, I know nothing about the transaction or what was back of it, or the negotiations leading up to it.

Mr. Slaff: I should like at this time, Mr. Examiner, to offer this document in evidence, and ask that it be copied physically into the record at this point.

Mr. Laing: No objection, subject only to checking the accuracy of the copy.

Trial Examiner: Do you wish to have it copied in, as well as making it an exhibit, Mr. Slaff?

Mr. Slaff: Yes, your Honor.

Trial Examiner: The Examiner will direct, then, that it [552] be copied into the record. I assume you have no objection to its offer as an exhibit, Mr. Laing?

Mr. Laing: No.

Trial Examiner: All right. Exhibit 25 will be received in evidence.

(Exhibit No. 25 was received in evidence.)

(Testimony of Will T. Neill.)

“File 53-M
Director’s Meetings
& Minutes

copy

“New York, N. Y. Dec. 17, 1913.

Guy W. Talbot
Pacific Power & Light Co.
Portland, Oregon.

We feel that Pacific Power & Light Company should immediately make arrangements to purchase Vancouver and suggest following procedure. American Company to sell to Pacific Company all capital stock of Vancouver Company for actual cost, namely one hundred forty thousand four hundred sixteen dollars eighty cents. This figure includes interest up to and including December 20th. Please send Pacific Company six percent demand note dated December twentieth in favor American Company for above amount. We think Vancouver Company should prior to December thirty-first deed its property to Pacific Company and for this purpose it will be necessary [553] hold Pacific Company directors meeting which meeting can if you desire be delayed until latter part of December in order allow engineer time to certify bonds hereafter mentioned. Wire rush Thursday date you expect hold this meeting and that you approve above plan. Upon receipt your wire we will mail you Vancouver Company shares capital stock held here and statement showing cost. At above mentioned

(Testimony of Will T. Neill.)

director's meeting we suggest you transfer fifty thousand dollars from surplus to general reserve account as of December thirty-first. After deeding Vancouver to Pacific Company the increased earnings would undoubtedly allow you issue additional Pacific bonds and we suggest you have engineer start immediately making certificate and at above mentioned director's meeting pass necessary resolution as we very anxious obtain these bonds early in January this being reason for transferring Vancouver to Pacific Company at this time. We figure Pacific Company including Vancouver earnings can issue one hundred and fifty bonds. In order be safe suggest you arrange issue one hundred and twenty-five bonds.

"F. G. SYKES."

By Mr. Slaff:

Q. Now, Mr. Neill, I ask you whether it is not a fact that a special meeting of the Board of Directors of Pacific Power & Light Company was held on December 30, 1913, at which the directions so contained in Exhibit 25 were [554] carried out; do you know? A. I do not know.

Q. I call your attention to what purports to be a copy of the minutes, or an extract from the minutes, of special meeting of the Board of Directors of the Pacific Power & Light Company held on December 30, 1913, and ask you whether it

(Testimony of Will T. Neill.)

appears from that that those directions in that Exhibit 25 were carried out?

A. Yes. This document indicates, at the Board meeting on December 30, 1913, the Board approved the purchase of the Vancouver,—capital stock of the Vancouver Gas Company in the sum of \$144,416.88 from American Power & Light Company, and the delivery of a note to the American for that amount.

Mr. Slaff: I should like, Mr. Examiner, to have this three-page document, which is an extract from a special meeting of the Board of Directors of the Pacific Power & Light Company, held on Tuesday, December 30, 1913, marked as an exhibit and received in evidence.

Trial Examiner: It will be marked for identification as Exhibit No. 26.

(Exhibit No. 26 was received in evidence.)

HEARING EXHIBIT No. 26

SPECIAL MEETING OF BOARD OR DIRECTORS PACIFIC POWER & LIGHT COMPANY

Pursuant to notice duly given, a special meeting of the Board of Directors of Pacific Power & Light Company was held at the office of the company in the Spalding Building, Portland, Oregon, on Tuesday, December 30th, 1913, at 3:30 o'clock P. M.

(Testimony of Will T. Neill.)

There were present Messrs:

Edward Cookingham

J. C. Ainsworth

Miles C. Moore

Guy W. Talbot

John A. Laing

William Jones

C. Hunt Lewis

Josiah Richards

Philip Buehner

the above named constituting a quorum of the board.

Absent Messrs.

H. C. Lucas

S. S. Gordon

Fred S. Fogg

F. G. Sykes

S. Z. Mitchell

C. M. Dahl

The President of the company, Mr. Guy W. Talbot, acted as chairman and the Secretary, Mr. Geo. F. Nevins, acted as secretary of the meeting.

The president stated to the board that with the advice and approval of such members of the board resident in Portland as he was able to confer with, and also with the approval of the three members of the board in New York City, the company did, on December 20th, 1913, purchase from American Power & Light Company the entire capital stock of Vancouver Gas Company, a Washington cor-

(Testimony of Will T. Neill.)

poration, owning and operating a gas plant and business in the City of Vancouver, Washington, the purchase price paid for said stock being \$144,416.88, for which sum Pacific Power & Light Company had executed and delivered its promissory note in favor of American Power & Light Company; that it seemed best to your President and to such directors as the President was able to confer with in the matter to cause the physical property and franchises of Vancouver Gas Company to be conveyed forthwith to Pacific Power & Light Company, and that in pursuance thereof meetings of the stockholders and trustees of Vancouver Gas Company were held on the 29th instant in the City of Vancouver, Washington, authorizing and directing the deeding of all of the property and franchises, cash and assets of every description of Vancouver Gas Company to Pacific Power & Light Company, and that such a deed had been duly executed and the property transferred by Vancouver Gas Company to Pacific Power & Light Company on said date, said conveyance, however, having been made effective as of 12:00 o'clock P. M., November 30th, 1913; that at said meetings of the stockholders and trustees there was presented an offer of Pacific Power & Light Company, executed by its President and Secretary, agreeing to assume the debts and liabilities of Vancouver Gas Company in consideration of such conveyance of the latter company's property and franchises, and that the deed made had been made in acceptance and pursuance of said

(Testimony of Will T. Neill.)

offer; and that the stock of Vancouver Gas Company purchased by Pacific Power & Light Company on December 20th, as above stated, was represented by John Laing who was appointed proxy by an instrument duly executed in the name and behalf of the company by the President and Secretary, and who was authorized by such proxy to vote in favor of authorizing such conveyance.

Thereupon, upon motion duly seconded and carried, it was unanimously

Resolved that the purchase by Pacific Power & Light Company of the capital stock of Vancouver Gas Company, a corporation of the State of Washington, for the sum of \$144,416.88 from American Power & Light Company and the execution and delivery by Pacific Power & Light Company and the execution and delivery by Pacific Power & Light Company of its promissory note in favor of American Power & Light Company for said sum of \$144,416.88 in payment of said purchase price, be, and the same is hereby in all respects approved, ratified and adopted; and that the action of the officers of this company in causing the aforesaid stock so purchased to be voted in favor of the conveying of the property, assets and franchises of Vancouver Gas Company to Pacific Power & Light Company in consideration of Pacific Power & Light Company's agreeing to assume the debts and liabilities of said Vancouver Gas Company, and all other action taken by the officers of this company in connection with the acquisition of the property,

(Testimony of Will T. Neill.)

assets and business of said Vancouver Gas Company, be, and such action is in all respects approved, ratified and adopted.

Mr. Slaff: Again, with respect to this document, Mr. Examiner, I regret to say that I have no copies, but I will furnish copies within the next day or two.

Trial Examiner: Very well, Mr. Slaff. [555]

Mr. Liang: Do you want to offer this now, Mr. Slaff?

Trial Examiner: Yes. He did offer it.

Mr. Laing: I have no objection to its receipt.

Trial Examiner: It will be received as Exhibit 26.

By Mr. Slaff:

Q. Now, Mr. Neill, I wish to call you attention to a letter dated June 4, 1924, on the letterhead of Electric Bond & Share Company, 71 Broadway, New York City, addressed to Mr. Guy W. Talbot, President of the Pacific Power & Light Company, signed by C. E. Groesbeck, (counsel handing a paper to the witness).

Mr. Slaff: I should like to have that document, Mr. Examiner, marked as the next exhibit number for identification.

Trial Examiner: It will be marked as Exhibit No. 27 for identification.

(The document referred to was marked Exhibit No. 27 for identification.)

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. Mr. Groesbeck, in 1924, was president of the American Power & Light Company, was he not?

A. I don't know, Mr. Slaff, what position he held.

Q. Well, you can verify whether or not he was president at that time, can you not?

A. It can be verified. [556]

Q. In any event, he was one of the major officers,—one of the major executive officers of the American Power & Light Company at that time; is that correct?

A. I don't know. This letter is written on the Electric Bond & Share Company's stationery. He was,—at least, I know he was a major officer of one of the two companies; but I am sorry that I am not familiar with this.

Q. Well, it is understandable why you would not have the exact detail of the particular positions they occupied from time to time. Will you be good enough to check that, if you can, reasonably readily, simply so that the record will be complete.

Mr. Laing: I will make a record of it, Mr. Neill.

The Witness: O.K.

By Mr. Slaff:

Q. Now, I suppose you would agree, too, that this letter speaks pretty well for itself?

A. I think it does.

Mr. Slaff: Mr. Examiner, I should like at this time to offer this document in evidence as the next

(Testimony of Will T. Neill.)

exhibit. and ask that it be copied into the record at this point.

Mr. Laing: No objection.

Trial Examiner: Very well. So ordered. Exhibit 27 will be received.

(Exhibit No. 27 was received in evidence.)

[557]

“File 53-B

P. P. & L. Co.-Organization

“ELECTRIC BOND AND SHARE COMPANY

Seventy-One Broadway

New York

June 4, 1924.

Mr. Guy W. Talbot, President,
Pacific Power & Light Company,
Portland, Oregon.

Dear Mr. Talbot:

“I enclose herewith resignations of Mr. Sykes as a director, member of Executive Committee and Vice-President of both Portland Gas & Coke Company and Pacific Power & Light Company.

“To fill the vacancies created, and to provide us with sufficient members of your Boards to hold Executive meetings here when necessary, I suggest that on the acceptance of these resignations you elect Mr. Silliman a director, a member of Executive Committee and Vice-President of Portland Gas & Coke Company, and a director and member of Executive Committee of Pacific Power & Light Company. It will not be necessary to elect him a

(Testimony of Will T. Neill.)

vice-president of the latter company as we already have two vice-president of that company here, which is sufficient, and I think it is desirable, for local reasons, to limit to the smallest number necessary the number [558] of New York directors and officers.

“I am sorry not to have seen more of you during your recent visit here, and hope for better luck next time.

“With personal regards and best wishes, I am

“Yours very truly

(Signed) C. E. GROESBECK

CEG-JJG-enc.”

By Mr. Slaff:

Q. Do you know, Mr. Neill, whether Mr. Silliman was elected a director and member of the Executive Committee of the Pacific Power & Light Company following receipt of this letter?

A. No, I do not.

Q. Well,—

Mr. Laing: (Interposing) Maybe we can dispose of this.

By Mr. Slaff:

Q. I call your attention to the minutes of the quarterly meeting of the Board of Directors of Pacific Power & Light Company held on July 16, 1924, and I ask you whether it is not a fact that the resignation of Mr. F. G. Sykes as director and member of the Executive Committee and vice-president of the Company was tendered and accepted?

(Testimony of Will T. Neill.)

A. That is right.

Q. And I ask you if it is not a fact, also, that thereupon, Mr. Frank Silliman, Jr., of New York, was elected [559] a director of the Company and was also elected a member of the Executive Committee of the Board to fill the vacancy in said offices, caused by the resignation of Mr. Sykes? [560]

A. That is correct.

Q. I next wish to call your attention to a letter dated July 5, 1926, on the letterhead of the Electric Bond & Share Company, 71 Broadway, New York, to Mr. Guy W. Talbot, President, and signed by Frank Silliman, Jr., and ask you to read it, for your information.

(Counsel handed the paper to the witness.)

Have you had an opportunity to read that now, Mr. Neill? A. Yes, sir.

Mr. Slaff: I would like to ask that this document be marked as an exhibit, Mr. Examiner.

Trial Examiner: It will be marked for identification as Exhibit No. 28.

(The document referred to was marked exhibit No. 28 for identification.)

Mr. Slaff: I would like to offer this document, Exhibit No. 28 for identification, in evidence, and ask also that it be copied into the record at this point.

Mr. Laing: I have no objection.

Trial Examiner: It will be so ordered. Exhibit 28 will be received.

(Exhibit No. 28 received in evidence.)

(Testimony of Will T. Neill.)

(The document referred to, Exhibit No. 28,
is as follows:) [561]

“ELECTRIC BOND AND SHARE COMPANY
Seventy-One Broadway
New York

July 10, 1926

Mr. Guy W. Talbot, President,
Pacific Power & Light Company,
Gasco Building, Portland, Oregon.

Dear Mr. Talbot:

Messrs. Mitchell, Groesbeck and Farrar have approved the plan for calling the outstanding First Lien General Mortgage Bonds of Pacific Power & Light Company as set forth in the enclosed computation.

This computation is based on calling these Bonds as of September 1st but if you approve we will proceed to call them at the earliest date practicable, and we are now preparing the papers necessary to effect this retirement and will send them to you as soon as possible. We discussed this matter when you were last in New York and I expect that you will approve this plan.

Please note that the plan contemplates borrowing \$1,287,500.00 from American Power & Light Company at the present rate of interest, (6%)—being the amount required to pay the principal and Premium of three (3) points upon the amount of \$1,250,000.00. The collateral to these Bonds, being an equal amount of the 5's now outstanding, will be free in the Treasury of the Company. [562]

(Testimony of Will T. Neill.)

Please note also that we have planned on amortizing the discount and expense on the 8's and the premium of three (3) points, to be paid when the Bonds are retired, over a period from the date of retirement to August 1, 1930. We are doing this because, later on when the 5's are called, and Pacific Company is refinanced, we will probably be able to lose this discount and premium through an intermediary in that transaction. This is in line with your suggestion, made some time ago. If there should be any valid objection raised to this, as for instance, by the Commission, we would immediately charge it off to profit and loss without serious impairment of the surplus account, as it will require only about \$9,000.00 of which about \$10,000.00 would come back at the end of the first year in income tax saving.

The present tendency in income tax legislation seems to be to lower taxes as a whole and increase the Corporation taxes and, if we were to charge the balance of this unamortized discount and premium to surplus account later on, we would probably save more than if it was done now, but to me the principal point seems to be that we may be able to lose the unamortized balance in the major refinancing operation of the Company when the 8's are called.

Please let me hear from you as soon as possible so that we may proceed.

Very truly yours,

(Signed) FRANK SILLIMAN, JR." [563]

(Testimony of Will T. Neill.)

By Mr. Slaff:

Q. You have already identified Messrs. Mitchell, Groesbeck and Sullivan. Can you tell us about Mr. Farrar, who was mentioned in the first sentence of the letter?

A. No sir; I cannot.

Q. Was he connected with the Pacific Light & Power Company, to your knowledge, at this time, in 1926?

A. I think not—not, in the western organization.

Q. Well, will you check for us and advise us, Mr. Neill, whether or not Mr. Farrar was a vice-president of Electric Bond & Share Company?

A. Yes, sir.

Q. All right. And a director of that company, and whether or not he was in charge of or had important responsibilities in connection with the bond department of Electric Bond & Share Company.

Now, I call your attention, Mr. Neill, to the fourth paragraph of that letter, and particularly to the first two sentences thereof, which read as follows:

“Please note also that we have planned on amortizing the discount and expense on the 8’s and the premium of three (3) points, to be paid when the Bonds are retired, over a period from the date of retirement to August 1, 1930. We are doing this because, later on when the 5’s are called, and Pacific Company is refinanced, we will probably be

(Testimony of Will T. Neill.)

able [564] to lose this discount and premium through an intermediary in that transaction."

Now, in that transaction subsequently, when the 5's were called, was an intermediary used?

A. When the 5's were called?

Mr. Laing: Those were never called, Mr. Slaff.

By Mr. Slaff:

Q. Well, when Pacific was refinanced in 1930, was an intermediary used?

A. I don't know exactly what this letter means in that respect; but as to the refinancing in 1930, I don't believe there was any intermediary used.

Q. You do not believe there was one?

A. Any intermediary used.

Q. Who is Mr. L. Boyd Hatch?

A. I think, if I recall—I don't know exactly—as I recall, Mr. L. Boyd Hatch was a man who had handled the acquisition of some property in Washington and Idaho, which ultimately got into Inland Power & Light Company.

Mr. Laing: That was in 1925, Mr. Slaff. It was not subsequent to 1926.

By Mr. Slaff:

Q. Did Mr. Hatch have anything to do with the Pacific refinancing?

A. As far as I know, he didn't; but I don't know [565] all of the details of that refinancing. In respect to the details, any statement of mine would be somewhat speculative.

Q. I certainly wouldn't want you to speculate. Will you be good enough to check for us and tell

(Testimony of Will T. Neill.)

us whether the prediction or the hope expressed in the letter that "we will probably be able to lose this discount and premium through an intermediary in that transaction" came true; whether it was carried out? A. I will be glad to.

Q. Now, it is also a fact, is it not, that from time to time your Company was advised—directed, by American as to when Board of Directors' meetings should be held, and what action should be taken?

A. Well, are you referring now to these exhibits that we have just been discussing today?

Q. I am referring to other occasions.

A. Well, I think at all times during the Company's history, the American Company has been active in assisting Pacific Company in all of its financing and refinancing transactions, and I think the natural result of that assistance would be just along that line, at least, making the suggestions as to the most effective way of carrying out these arrangements as to Board meetings and things connected with the actual transaction. [566]

Q. Would it be fair to say that the American's role went further than making suggestions, and that the American really called the turns on important matters such as that?

A. As I said in my earlier testimony, I have been with the Company for 20 years, and I know of no instance where a thing like that happened, because the policies are decided locally and, so far as I know, entirely so.

(Testimony of Will T. Neill.)

Mr. Slaff: I should just like to have marked for identification a telegram under date of December 21, 1927, addressed to Guy W. Talbot, Pacific Power & Light Company, signed by Frank Silliman, Jr.

Trial Examiner: It will be marked for identification as Exhibit No. 29.

(The Document Referred to Was Marked Exhibit No. 29 for Identification.)

Mr. Slaff: I should like to have that document received in evidence and copied into the record at this point.

Mr. Laing: No objection, Mr. Examiner, subject to our checking as to accuracy of the copy.

Trial Examiner: Very well. It will be so ordered. Exhibit 29 will be received.

(Exhibit No. 29 Received in Evidence.)

(The document referred to is as follows:)

“Western Union Telegram

1927 Dec 21 PM 5 42 [567]

NA 310 65 Collect NL. New York NY 21

Guy W. Talbot

Pacific Power & Light Company Public Service Bldg Portland Ore We Mailing You Tonight Following in Pacific Bonds Redemption Matter in Two Sets, One by Airmail, One by Train Mail: First Draft of Resolutions to Be Submitted to Pacific Board: Second, Draft of Notice of Redemption for Publication Stop American Power

(Testimony of Will T. Neill.)

& Light Company Board Meets Friday to Act Upon Entire Reorganization Plan Stop Do Not Call Board Meeting Until You Advised of Action of American Power & Light Company Board.

FRANK SILLIMAN JR."

By Mr. Slaff:

Q. What water properties did your company own in 1929? Do you know, approximately?

A. 1929?

Q. Yes.

Trial Examiner: I don't think that is clear, Mr. Slaff. Do you mean water sites?

Mr. Slaff: No, no; water systems, retail water systems.

A. Well, I know that we owned the water system at Kennewick, Washington; I think all the others had been disposed of—all the others which had been owned prior to that time had been disposed of by 1929.

By Mr. Slaff:

Q. And that property was owned by the Pacific Power & [568] Light outright?

A. That is right; you mean, Kennewick?

Q. Yes. A. Yes.

Q. It was not owned by the American?

A. 1929?

Q. Yes. A. That is right.

Q. It was not? A. That is right.

Q. It was not owned by Electric Bond & Share?

A. No.

(Testimony of Will T. Neill.)

Q. Why did you have to get permission from Bond & Share or from American in order to determine whether you could negotiate for the sale of those properties?

A. Well, I don't think it would have been necessary.

Q. Well, I call your attention to a telegram from Guy W. Talbot to Frank Silliman, Jr., under date of April 11, 1929.

Mr. Slaff: I should like to ask, Mr. Examiner, that that be marked as an exhibit for identification.

Trial Examiner: It will be marked for identification as Exhibit 30.

(The Document Referred to Was Marked Exhibit No. 30 for Identification.) [569]

By Mr. Slaff:

Q. Now, I ask you, Mr. Neill, whether, in the light of that telegram, you would care to change your last answer?

A. May I have the question and answer read—the question which you asked and the answer?

Q. Surely.

(Thereupon, the question and answer referred to were read aloud by the reporter as follows:

“Q. Why did you have to get permission from Bond & Share or from American in order to determine whether you could negotiate for the sale of those properties?

(Testimony of Will T. Neill.)

“A. Well, I don’t think it would have been necessary.”)

By Mr. Slaff:

Q. Now, I will ask you whether, in the light of this telegram of April 11, 1929, which has been marked as Exhibit 30 for identification, you would like to modify your last answer.

A. No; I am not modifying the answer. As I remember, at this particular time Mr. Frank Silliman—when the letter was written—I may be wrong about this, but, as I recall, he was an operating sponsor or adviser, and a matter of this kind would naturally be discussed with the sponsor, especially in view of the fact that apparently some time prior to April 11, 1929 it had been under discussion. What was in the minds of the two gentlemen, of course, concerning the desirability [570] or lack of desirability of disposing of this particular water system, I don’t know. I think this is a natural result of that sort of a situation.

Mr. Slaff: I should like to offer at this time, Mr. Examiner, this Exhibit 30 for identification in evidence, and also ask that it be copied into the record at this point.

Mr. Laing: I have no objection.

Trial Examiner: It will be so ordered. Exhibit 30 will be received.

(Exhibit No. 30 received in evidence.)

(The exhibit referred to, Exhibit 30, is as follows:)

(Testimony of Will T. Neill.)

“Western Union Telegram

April 11, 1929.

Frank Silliman Jr., Vice President,
Electric Bond and Share Company,
No. 2 Rector St.,—New York, N. Y.

Responsible party believes he in position to sell our domestic water system but will require commission stop Please advise if all right to negotiate stop Last time I had this matter up you thought best to let matter rest as you might want to trade these for some other properties. Please advise.

GUY W. TALBOT”

By Mr. Slaff:

Q. By the way, Mr. Silliman, you thought, was a sponsor of the Pacific Power & Light Company; he was not [571] employed in that capacity by the Pacific?

A. Oh, no.

Q. He was employed in that capacity in the Electric Bond & Share?

A. Yes, and acting under the service agreement which the Pacific Power & Light had with the Electric Bond & Share.

Q. And I call your attention, also, to a telegram dated April 13, 1929, from Mr. Silliman to Mr. Talbot in response to this telegram of April 11, which has already been marked for identification as Exhibit 30 and received in evidence.

Mr. Slaff: I ask that that be marked for identification.

(Testimony of Will T. Neill.)

Trial Examiner: It will be marked for identification as Exhibit 31.

(The document referred to was marked Exhibit No. 31 for Identification.)

Mr. Laing: It is agreeable with me to have the exhibit corrected to "will advise".

Mr. Slaff: I am sure that that is correct. May the reporter be directed to insert the "will" in front of the word "advise" on the second line, in lieu of the word "all"?

Trial Examiner: Yes. I will ask the reporter to make the physical correction on the exhibit.

Mr. Slaff: I should like to have this document received in evidence, Mr. Examiner, and copied into the record at this [572] point.

Mr. Laing: No objection.

Trial Examiner: If there is no objection, it will be so ordered. Exhibit 31 will be received.

(Exhibit No. 31 received in evidence.)

(The document referred to, Exhibit 31, is as follows:)

"Western Union Telegram

1929 Apr 13 AM 10 47

SA 185 28 Collect CD New York NY 13 19A

Guy W. Talbot President

Pacific Power & Light Co Public Service Bldg.
Portland Oregon

Your Night Letter Eleventh Stop Think it All
Right to Start Negotiations Stop Will Advise
You in Few Days Whether Any Possibility of
Trading Water for Electric Properties

FRANK SILLIMAN JR." [573]